A/67/17

United Nations

Report of the United Nations Commission on International Trade Law

Forty-fifth session
(25 June-6 July 2012)

General Assembly
Official Records
Sixty-seventh session
Supplement No. 17

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United Nations • New York, 2012

Note

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

ISSN 0251-9127

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I. Introduction

1. The present report of the United Nations Commission on International Trade Law (UNCITRAL) covers the forty-fifth session of the Commission, held in New York from 25 June to 6 July 2012.

2. Pursuant to General Assembly resolution 2205 (XXI) of 17 December 1966, this report is submitted to the Assembly and is also submitted for comments to the United Nations Conference on Trade and Development.

II. Organization of the session

A. Opening of the session

3. The forty-fifth session of the Commission was opened by the Under-Secretary-General for Legal Affairs and Legal Counsel of the United Nations, Patricia O'Brien, on 25 June 2012.

B. Membership and attendance

4. The General Assembly, in its resolution 2205 (XXI), established the Commission with a membership of 29 States, elected by the Assembly. By its resolution 3108 (XXVIII) of 12 December 1973, the Assembly increased the membership of the Commission from 29 to 36 States. By its resolution 57/20 of 19 November 2002, the Assembly further increased the membership of the Commission from 36 States to 60 States. The current members of the Commission, elected on 22 May 2007, on 3 November 2009 and on 15 April 2010, are the following States, whose term of office expires on the last day prior to the beginning of the annual session of the Commission in the year indicated:[1] Algeria (2016), Argentina (2016), Armenia (2013), Australia (2016), Austria (2016), Bahrain (2013), Benin (2013), Bolivia (Plurinational State of) (2013), Botswana (2016), Brazil (2016), Bulgaria (2013), Cameroon (2013), Canada (2013), Chile (2013), China (2013), Colombia (2016), Croatia (2016), Czech Republic (2013), Egypt (2013), El Salvador (2013), Fiji (2016), France (2013), Gabon (2016), Georgia (2015), Germany (2013), Greece (2013), Honduras (2013), India (2016), Iran (Islamic Republic of) (2016), Israel (2016), Italy (2016), Japan (2013),

[1] Pursuant to General Assembly resolution 2205 (XXI), the members of the Commission are elected for a term of six years. Of the current membership, 30 were elected by the Assembly on 22 May 2007 (decision 61/417), 28 were elected by the Assembly on 3 November 2009, and two were elected by the Assembly on 15 April 2010. By its resolution 31/99, the Assembly altered the dates of commencement and termination of membership by deciding that members would take office at the beginning of the first day of the regular annual session of the Commission immediately following their election and that their terms of office would expire on the last day prior to the opening of the seventh regular annual session following their election. The following six States members elected by the Assembly on 3 November 2009 agreed to alternate their membership among themselves until 2016 as follows: Belarus (2010-2011, 2013-2016), Czech Republic (2010-2013, 2015-2016), Poland (2010-2012, 2014-2016), Ukraine (2010-2014), Georgia (2011-2015) and Croatia (2012-2016).

Jordan (2016), Kenya (2016), Latvia (2013), Malaysia (2013), Malta (2013), Mauritius (2016), Mexico (2013), Morocco (2013), Namibia (2013), Nigeria (2016), Norway (2013), Pakistan (2016), Paraguay (2016), Philippines (2016), Republic of Korea (2013), Russian Federation (2013), Senegal (2013), Singapore (2013), South Africa (2013), Spain (2016), Sri Lanka (2013), Thailand (2016), Turkey (2016), Uganda (2016), Ukraine (2014), United Kingdom of Great Britain and Northern Ireland (2013), United States of America (2016) and Venezuela (Bolivarian Republic of) (2016).

5. With the exception of Australia, Bahrain, Bolivia (Plurinational State of), Botswana, Bulgaria, Egypt, Gabon, Greece, Jordan, Latvia, Malaysia, Malta, Mauritius, Namibia, Paraguay, South Africa, Sri Lanka, Ukraine and the United Kingdom, all the members of the Commission were represented at the session.

6. The session was attended by observers from the following States: Belarus, Comoros, Cuba, Cyprus, Ecuador, Finland, Guatemala, Indonesia, Kuwait, Netherlands, Panama, Poland, Qatar, Romania, Sweden and Switzerland.

7. The session was also attended by observers from the Holy See and the European Union.

8. The session was also attended by observers from the following international organizations:

(a) *United Nations system*: United Nations Development Program (UNDP) and the World Bank;

(b) *Intergovernmental organizations*: Central American Court of Justice, International Development Law Organization (IDLO), International Institute for the Unification of Private Law (Unidroit) and the World Customs Organization;

(c) *Invited non-governmental organizations*: American Bar Association (ABA), Association droit et méditerranée (Jurimed), Centre for International Legal Studies, Commercial Finance Association, Corporate Counsel International Arbitration Group, European Law Students' Association, Forum for International Conciliation and Arbitration, International Bar Association, International Chamber of Commerce (ICC), International Insolvency Institute, International Law Institute (ILI), Milan Club of Arbitrators, Moot Alumni Association, New York City Bar Association, New York State Bar Association and Vale Columbia Centre on Sustainable International Investment.

9. The Commission welcomed the participation of international non-governmental organizations with expertise in the topics comprising the major items on the agenda. Their participation was crucial for the quality of texts formulated by the Commission, and the Commission requested the Secretariat to continue to invite such organizations to its sessions.

C. Election of officers

10. The Commission elected the following officers:

Chair:	Hrvoje Sikirić (Croatia)
Vice-Chairs:	Rosario Elena A. Laborte-Cuevas (Philippines) Jorge Roberto Maradiaga M. (Honduras) Tore Wiwen-Nilsson (Sweden) (elected in his personal capacity)
Rapporteur:	Agasha Mugasha (Uganda)

D. Agenda

11. The agenda of the session, as adopted by the Commission at its 943rd meeting, on 25 June 2012, was as follows:

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Finalization and adoption of a Guide to Enactment of the UNCITRAL Model Law on Public Procurement.
5. Finalization and adoption of the recommendations to assist arbitral institutions and other interested bodies with regard to arbitration under the UNCITRAL Arbitration Rules, as revised in 2010.
6. Arbitration and conciliation: progress report of Working Group II.
7. Online dispute resolution: progress report of Working Group III.
8. Electronic commerce: progress report of Working Group IV.
9. Insolvency law: progress report of Working Group V.
10. Security interests: progress report of Working Group VI.
11. Possible future work in the area of public procurement and related areas.
12. Possible future work in the area of microfinance.
13. Possible future work by UNCITRAL in the area of international contract law.
14. Preparation of a guide on the New York Convention.
15. Endorsement of texts of other organizations.
16. Technical assistance to law reform.
17. Promotion of ways and means of ensuring a uniform interpretation and application of UNCITRAL legal texts.
18. Status and promotion of UNCITRAL legal texts.

19. Coordination and cooperation:

(a) General;

(b) Coordination in the field of security interests;

(c) Reports of other international organizations;

(d) International governmental and non-governmental organizations invited to sessions of UNCITRAL and its working groups.

20. UNCITRAL regional presence.

21. Role of UNCITRAL in promoting the rule of law at the national and international levels.

22. Strategic planning.

23. International commercial arbitration moot competitions.

24. Relevant General Assembly resolutions.

25. Other business.

26. Date and place of future meetings.

27. Adoption of the report of the Commission.

E. Adoption of the report

12. At its 948th and 949th meetings, on 27 and 28 June 2012, and at its 956th and 957th meetings, on 6 July 2012, the Commission adopted the present report by consensus.

III. Finalization and adoption of a Guide to Enactment of the UNCITRAL Model Law on Public Procurement

13. The Commission had before it at the current session: (a) the report of Working Group I (Procurement) on the work of its twenty-first session (A/CN.9/745); (b) a note by the Secretariat introducing a proposal for a chapter in a draft Guide to Enactment of the UNCITRAL Model Law on Public Procurement (A/CN.9/754 and Add.1-3); and (c) a note by the Secretariat introducing a proposal for a Revised Guide to Enactment to accompany the UNCITRAL Model Law on Public Procurement (A/CN.9/WG.I/WP.79 and Add.1-19).

A. Consideration of proposals for a Guide to Enactment of the UNCITRAL Model Law on Public Procurement

14. The Commission first took up those parts of the draft Guide to Enactment of the UNCITRAL Model Law on Public Procurement which Working Group I (Procurement) had not considered in detail at its twenty-first session, held in New York from 16 to 20 April 2012: chapter II of document A/CN.9/WG.I/WP.79; documents A/CN.9/WG.I/WP.79/Add.1 and 2;

sections A-C of document A/CN.9/WG.I/WP.79/Add.7; paragraphs 1 to 5 of document A/CN.9/WG.I/WP.79/Add.8; section A of documents A/CN.9/WG.I/WP.79/Add.9, 10, 13 and 15; and documents A/CN.9/754 and Add.1-3 and A/CN.9/WG.I/WP.79/Add.18.

15. The Commission requested the Secretariat to ensure consistent references to "suppliers or contractors" throughout the Guide.

16. The Commission approved that part of the text of the draft Guide contained in document A/CN.9/WG.I/WP.79 as amended by the Working Group at its twenty-first session (A/CN.9/745, para. 14).

17. The Commission agreed to add a discussion of collusion in document A/CN.9/WG.I/WP.79/Add.2, either in or after paragraph 19 or in subsection 5, on promoting the integrity of, and fairness and public confidence in, the procurement process (i.e. objective (e) in the preamble to the 2011 UNCITRAL Model Law on Public Procurement).[2] The understanding was that, regardless of where the discussion of collusion appeared in the final text, cross-references would be included throughout the Guide to make it clear that the problem of collusion was relevant to not only competition in, but also the integrity of, the procurement process. It was agreed that the discussion of collusion should include the following elements: (a) collusion occurs where two or more suppliers or contractors, or one or more supplier(s) or contractor(s) and the procuring entity, work in tandem to manipulate the market in a way detrimental to obtaining an optimal outcome in the given procurement; (b) the manipulation might affect the price, keeping it artificially high, or other elements of a submission (such as the quality offered); alternatively, it could involve an agreement to share the market by artificially inflating prices or artificially distorting other elements of a submission, or an agreement not to present submissions or otherwise to distort fair competition; (c) collusion would probably violate the law of the State; (d) collusion involved the intention of the parties concerned to collude; and (e) the complicity of representatives of the procuring entity in collusion was not uncommon. In the text, it would also be noted that, although the absence of real competition was a consequence of collusion, the absence of competition could also result from other reasons, e.g. the absence of expertise on the suppliers' side or the ignorance of suppliers about procurement opportunities, and that an apparently competitive procedure might have involved limited collusion between some participants. Thus, it was concluded, there was no automatic link between the extent of competition and collusion.

18. It was recalled that the Working Group had decided not to include a glossary as part of the Guide (A/CN.9/745, para. 36). It was therefore understood that references to the glossary as an annex to the Guide would be deleted.

19. The Commission approved that part of the text of the draft Guide contained in document A/CN.9/WG.I/WP.79/Add.2 as amended by the Commission at the present session (see paras. 17 and 18 above) and by the Working Group at its twenty-first session (A/CN.9/745, para. 16).

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[2] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 17* (A/66/17), annex I.

20. The Commission considered the amendment proposed by the Working Group to paragraph 11 of document A/CN.9/WG.I/WP.79/Add.10 (A/CN.9/745, para. 24 (a)). Objection was raised to adding text to the draft Guide that referred to reluctance to participate in request for proposals with dialogue proceedings because of elevated risks of corruption. In response to suggestions to refer in that paragraph instead to difficulties with the use of that method in situations in which the procuring entity lacked experience and expertise to handle competitive negotiations, it was argued that experience and expertise could not be gained unless that method was used (and that new procurement methods had indeed been implemented with positive results). The Commission agreed to leave paragraph 11 unchanged and to replace in paragraph 12 the phrase "capacity to negotiate" with the phrase "capability or skills to negotiate." The Commission also agreed that the term "capacity" should be reviewed where it was used in a similar context elsewhere in the draft Guide.

21. With reference to paragraph 18 of document A/CN.9/WG.I/WP.79/Add.10 as amended by the Working Group at its twenty-first session (A/CN.9/745, para. 24 (c)), the Commission agreed that the term "probity officers" should not appear in the text of the Guide.

22. The Commission approved that part of the text of the draft Guide contained in document A/CN.9/WG.I/WP.79/Add.10 as amended by the Commission at the present session (see paras. 20 and 21 above) and by the Working Group at its twenty-first session (A/CN.9/745, para. 24 (b) and (c)).

23. With reference to paragraph 18 of document A/CN.9/WG.I/WP.79/Add.13, the Commission agreed that a better balance of the benefits and disadvantages of involving third-party agencies in setting up and administering electronic reverse auctions was required. Accordingly, a consideration of the potential benefits of using third parties in electronic reverse auctions would be included, analogous to the discussion in subparagraph (4) (a) of document A/CN.9/WG.I/WP.79/Add.15 of the potential advantages of administrative efficiency and the discussion in subparagraphs (4) (g) and (i) of that document of using centralized purchasing agencies to operate framework agreements. The Commission approved that part of the text of the draft Guide contained in document A/CN.9/WG.I/WP.79/Add.13 as amended by the Commission at the present session and by the Working Group at its twenty-first session (A/CN.9/745, para. 27).

24. With reference to paragraph 6 of document A/CN.9/WG.I/WP.79/Add.15, the Commission agreed to include a discussion of possible additional barriers to access to the public procurement market by small and medium enterprises, particularly where framework agreements were used in combination with electronic tools. The Secretariat was requested to avoid repetition with paragraph 18 of document A/CN.9/WG.I/WP.79/Add.15 in that regard and to ensure that the elements of the discussion were appropriately located in the commentary on enactment policy issues and in the commentary on issues of implementation and use. The Commission approved that part of the text of the draft Guide contained in document A/CN.9/WG.I/WP.79/Add.15 as amended by the Commission at the present session and by the Working Group at its twenty-first session (A/CN.9/745, para. 29).

25. The Commission agreed to replace the word "thereafter" in paragraph 23 of document A/CN.9/WG.I/WP.79/Add.18 with the phrase "after contract formation",

and to replace the phrase "where there is a possibility that corrective action might mean undoing steps taken and wasting costs" in paragraph 30 of the same document with a reference to risking wasting time and probably costs, along the lines set out in paragraph 32 of that document. The Commission approved that part of the text of the draft Guide contained in document A/CN.9/WG.I/WP.79/Add.18 as amended by the Commission at the present session and by the Working Group at its twenty-first session (A/CN.9/745, para. 32).

26. With reference to document A/CN.9/754, the Commission requested the Secretariat: to reflect in paragraph 16 the discussion in the Working Group at its twenty-first session of the use of the terms "available" and "accessible" (A/CN.9/745, para. 17 (b)); to make clear in the third sentence of paragraph 35 that the relevant part of the record would not be available to suppliers or contractors that had been disqualified as a result of pre-qualification proceedings; to align paragraph 57 with paragraph 24 of document A/CN.9/754/Add.1; and to rephrase footnote 2 and that part of the draft Guide contained in document A/CN.9/754 and Add.1-3 to use the past tense to refer to the 1994 UNCITRAL Model Law on Procurement of Goods, Construction and Services[3] and the present tense to refer to the 2011 Model Law and reflect the content of footnote 2 in the text of the Guide.

27. With reference to paragraph 5 of document A/CN.9/754/Add.2, the Commission agreed to reflect, in the commentary to articles 34 and 46 of the 2011 Model Law, that there might be a risk of inadequate or distorted competition if the procuring entity did not select the suppliers or contractors from which to request quotations appropriately, for example if it requested quotations from suppliers or contractors belonging to a corporate group or that were otherwise under some form of common financial or managerial control.

28. The Commission instructed the Secretariat to ensure consistency in the discussion of similar issues and to ensure that their relative emphasis also remained consistent throughout part III of the Guide. The Commission approved that part of the text of the draft Guide contained in document A/CN.9/754 and Add.1-3, as amended by the Commission at the present session (see paras. 26-28 above).

29. The Commission then considered the parts of the draft Guide that the Working Group had discussed at its twenty-first session: documents A/CN.9/WG.I/WP.79/Add.3-6; section D of document A/CN.9/WG.I/WP.79/Add.7; paragraphs 6-46 of document A/CN.9/WG.I/WP.79/Add.8; section B of documents A/CN.9/WG.I/WP.79/Add.9 and 10, A/CN.9/WG.I/WP.79/Add.13 and A/CN.9/WG.I/WP.79/Add.15; and documents A/CN.9/WG.I/WP.79/Add.11 and 12, A/CN.9/WG.I/WP.79/Add.14, A/CN.9/WG.I/WP.79/Add.16 and 17 and A/CN.9/WG.I/WP.79/Add.19.

30. With reference to document A/CN.9/WG.I/WP.79/Add.3, the Commission agreed:

(a) To move the reference to Security Council measures and regimes from paragraph 9 to the commentary to article 3 and ensure that the obligations under such measures and regimes were also noted in the commentary to article 8;

[3] Ibid., *Forty-ninth Session, Supplement No. 17* and corrigendum (A/49/17 and Corr.1), annex I.

(b) To add a reference to international agreements in the last sentence of paragraph 15;

(c) To delete the second sentence in paragraph 24;

(d) To avoid the use of the word "author" when amending paragraph 29 in accordance with the instructions of the Working Group (A/CN.9/745, para. 17 (b));

(e) To delete the reference to "lobbying" in paragraph 39;

(f) To delete the words "such as tender securities" from the last sentence of paragraph 42.

31. The Commission approved that part of the text of the draft Guide contained in document A/CN.9/WG.I/WP.79/Add.3 as amended by the Commission at the present session (see para. 30 above) and by the Working Group at its twenty-first session (A/CN.9/745, para. 17). The Commission also confirmed the importance of the Guide's discussion on adapting the 2011 Model Law to suit local circumstances.

32. With reference to document A/CN.9/WG.I/WP.79/Add.4, the Commission agreed:

(a) To rephrase paragraph 9 along the following lines: "The purpose of article 8 is to provide for the full, unrestricted and international participation in public procurement. The article also sets out the limited situations in which the procuring entity may restrict the participation of certain categories of suppliers or contractors in procurement proceedings, including [cross-refer to the relevant commentary addressing sanctions or anti-terrorism measures under article 3, and implementation of socioeconomic policies]. Any such restriction of participation of suppliers or contractors in procurement proceedings risks violating free-trade commitments by States under relevant international instruments, such as the World Trade Organization's Agreement on Government Procurement. Paragraphs (3) to (5) of the article provide procedural safeguards when any such restriction is imposed.";

(b) To explain at the end of paragraph 17 that unnecessary requirements should not be imposed with a view to distorting or restricting international participation, and to include examples, such as (i) local requirements for foreign entities to establish a local presence as a precondition for participation in procurement proceedings, or (ii) unnecessary tax requirements;

(c) To ensure consistency in the discussion of the concepts of "misrepresentation" and "materiality" throughout the Guide.

33. The Commission approved that part of the text of the draft Guide contained in document A/CN.9/WG.I/WP.79/Add.4 as amended by the Commission at the present session (see para. 32 above) and by the Working Group at its twenty-first session (A/CN.9/745, para. 18).

34. With reference to paragraph 30 of document A/CN.9/WG.I/WP.79/Add.5 and paragraph 19 (j) of the report of the Working Group on the work of its twenty-first session (A/CN.9/745), the Commission agreed to, when implementing the recommendations of the Working Group, provide a balanced commentary on the use of tender securities and not to refer to small and medium-sized enterprises specifically. Instead, the Guide would state clearly that requiring a tender security should not be considered the norm and that the procuring entity should consider all

the implications of requiring tender securities (positive and negative) "on a case-by-case basis" prior to deciding whether to impose such a requirement. It was emphasized that the Guide should make it clear that the reference to on a case-by-case basis indicated differences in situations, rather than in practices among jurisdictions. It was further emphasized that one of the purposes of a tender security — to relieve concerns of the procuring entity as regards the qualifications and capacities of suppliers or contractors in the procurement proceedings — should not be overlooked in the commentary to article 17 of the 2011 Model Law.

35. The Commission approved that part of the text of the draft Guide contained in document A/CN.9/WG.I/WP.79/Add.5 as amended by the Commission at the present session (see para. 34 above) and by the Working Group at its twenty-first session (A/CN.9/745, para. 19).

36. With reference to the commentary to article 20 in document A/CN.9/WG.I/WP.79/Add.6, concerns were expressed as regards the use of the phrases "justify the price submitted" and "justification procedure". The suggestion was made to replace paragraph 6 of that document with the following text: "First, a written request for clarification must be made to the supplier or contractor concerned. The request should ask the supplier or contractor to clarify the basis upon which the price was determined and confirm such additional elements in this respect, to allow the procuring entity to conclude whether the supplier or contractor will be able to perform the procurement contract for the price submitted." Concerns were expressed that the suggested wording might indicate that the information sought could include information on costs, contrary to the thrust of the subsequent paragraphs of the draft Guide as amended by the Working Group at its twenty-first session (A/CN.9/745, para. 20). The Commission instructed the Secretariat to revise the commentary to article 20 to include the principles of the suggested addition, but without implying that information on costs could be sought.

37. The Commission agreed to replace the words "provide an exhaustive list of grounds" with the words "provide the grounds under the Model Law" in paragraph 14 of document A/CN.9/WG.I/WP.79/Add.6 and to delete the cross-reference to the World Bank debarment system in paragraph 48 of the same document.

38. The Commission agreed to revise paragraph 18 of document A/CN.9/WG.I/WP.79/Add.6 to state expressly that there was no requirement under the 2011 Model Law to have definitions of conflicts of interest or unfair competitive advantage; if, however, the State considered defining those concepts, it might wish to take into consideration the issues raised in paragraph 20 (h) of document A/CN.9/745. It was also pointed out that the Guide should state that what constituted unfair competitive advantage might need to be determined by competent authorities of the State on a case-by-case basis.

39. The Commission approved that part of the text of the draft Guide contained in document A/CN.9/WG.I/WP.79/Add.6 as amended by the Commission at the present session (see paras. 36-38 above) and by the Working Group at its twenty-first session (A/CN.9/745, para. 20).

40. With reference to document A/CN.9/WG.I/WP.79/Add.8, the Commission agreed:

(a) To amend the heading before paragraph 6 to reflect the content of the paragraph more clearly, to highlight to the reader the scope of the commentary it contained, and to reorder the sentences in the paragraph;

(b) To replace at the end of paragraph 11 the phrase "will not be able to obtain" with the words "will not be entitled under article 38 to obtain";

(c) To clarify in the penultimate sentence of paragraph 24 that the sentence was intended to address a situation in which there was a system failure prior to the receipt of a tender by the procuring entity.

41. The Commission approved that part of the text of the draft Guide contained in document A/CN.9/WG.I/WP.79/Add.8 as amended by the Commission at the present session (see para. 40 above) and by the Working Group at its twenty-first session (A/CN.9/745, para. 22).

42. With reference to document A/CN.9/WG.I/WP.79/Add.13, a query was raised as regards the reference to "services and construction" in paragraph 21. In response, it was clarified that, although the term "the subject matter of the procurement" was used consistently throughout the 2011 Model Law instead of specific references to "goods, construction and services", those latter terms were still used in the draft Guide, where appropriate and necessary. It was also noted that paragraph 4 of the commentary to article 2 in document A/CN.9/WG.I/WP.79/Add.3, in discussing the definition of the subject matter of procurement, contained descriptions of those three terms which drew on their respective definitions of the 1994 Model Law.

43. With reference to document A/CN.9/WG.I/WP.79/Add.14, the concern was raised that the Chinese version used the terms "electronic reverse auctions" and "auctions" interchangeably, which would lead to confusion in China, where those two terms had distinct meanings. It was noted that the text of the Guide in Chinese and other languages should be verified against the English version.

44. As regards document A/CN.9/WG.I/WP.79/Add.16, the Commission confirmed the agreement reached in the Working Group, as reflected in document A/CN.9/745, paragraph 30 (d).

45. The Commission approved the remaining parts of the draft Guide, as amended by the Working Group at its twenty-first session (A/CN.9/745). It was agreed that references in the Guide to the provisions of the 2011 Model Law should be made more user-friendly, by referring to specific articles, and not only to chapters, throughout the Guide.

B. Adoption of the Guide to Enactment of the UNCITRAL Model Law on Public Procurement

46. The Commission, after consideration of the text of the draft Guide, adopted the following decision at its 949th meeting, on 28 June 2012:

"*The United Nations Commission on International Trade Law*,

"*Recalling* its mandate under General Assembly resolution 2205 (XXI) of 17 December 1966 to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, and in particular those of developing countries, in the extensive development of international trade,

"*Noting* that procurement constitutes a significant portion of public expenditure in most States,

"*Recalling* the adoption of its Model Law on Public Procurement at its forty-fourth session, in 2011,[4]

"*Expressing appreciation* to the Working Group 1 (Procurement) for having prepared the draft Guide to Enactment of the UNCITRAL Model Law on Public Procurement,

"*Noting* that the draft Guide was the subject of due deliberation and extensive consultations with Governments and interested international organizations, and thus it can be expected that the Guide would greatly facilitate the understanding, enactment, interpretation and application of the Model Law and thus contribute significantly to the establishment of a harmonized and modern legal framework for public procurement,

"*Expressing appreciation* to Tore Wiwen-Nilsson, the Chair of Working Group 1 (Procurement), for his able leadership in the work of UNICTRAL on the Model Law and the Guide,

"1. *Adopts* the Guide to Enactment of the UNCITRAL Model Law on Public Procurement, as contained in document A/CN.9/WG.I/WP.79 and Add.1-19, as amended by Working Group 1 (Procurement) at its twenty-first session and further amended by the Commission during its forty-fifth session, and in document A/CN.9/754 and Add.1-3, as amended by the Commission during its forty-fifth session, and authorizes the Secretariat to edit and finalize the text of the Guide in the light of the report of Working Group 1 (Procurement) on the work of its twenty-first session and the deliberations of the Commission at its forty-fifth session as recorded in the report of the Commission on that session;

"2. *Requests* the Secretary-General to publish the UNCITRAL Model Law on Public Procurement with its Guide to Enactment, including electronically, and disseminate it broadly to Governments and other interested bodies;

"3. *Reiterates its recommendation* that all States use the UNCITRAL Model Law on Public Procurement in assessing their public procurement legal regime and give favourable consideration to the Model Law when they enact or revise their laws;

"4. *Recommends* that the Guide to Enactment be given due consideration by States when they assess their needs in public procurement law reform or enact or revise their public procurement laws, and by other stakeholders involved in public procurement proceedings;

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[4] Ibid., *Sixty-sixth Session, Supplement No. 17* (A/66/17), para. 192.

"5. *Endorses* efforts by the Commission secretariat to monitor practices and disseminate information with regard to the use of the Model Law and the Guide, including by bringing to the attention of the Commission issues arising as a result that could indicate that further work of UNCITRAL in the area of public procurement may be appropriate;

"6. *Reiterates*, in this context, the importance of coordination among the various procurement reform agencies and of other mechanisms to promote effective implementation and uniform interpretation of the Model Law and endorses the efforts and initiatives of the Commission secretariat aimed at achieving closer coordination and cooperation among the Commission and other international organs and organizations, including regional organizations, active in the field of procurement law reform, in order to avoid undesirable duplication of efforts and inconsistent, incoherent or conflicting results in the modernization and harmonization of public procurement law;

"7. *Also reiterates* its request to all States to support the promotion and implementation of the UNCITRAL Model Law on Public Procurement."

IV. Finalization and adoption of the recommendations to assist arbitral institutions and other interested bodies with regard to arbitration under the UNCITRAL Arbitration Rules as revised in 2010

47. The Commission recalled that, at its fifteenth session, in 1982, it had adopted "Recommendations to assist arbitral institutions and other interested bodies with regard to arbitration under the UNCITRAL Arbitration Rules".[5] The preparation of the 1982 recommendations had been undertaken by the Commission to facilitate the use of the UNCITRAL Arbitration Rules (1976)[6] in administered arbitration and to deal with instances when the Rules were adopted as institutional rules of an arbitral body or when the arbitral body was acting as appointing authority or provided administrative services in ad hoc arbitration under the Rules.[7] The Commission further recalled that, at its forty-third session, in 2010, it had entrusted the Secretariat with the preparation of similar recommendations with respect to the UNCITRAL Arbitration Rules, as revised in 2010[8] in view of the extended role granted to appointing authorities, for consideration by the Commission at a future session. At that session, it had been said that the recommendations would promote the use of the Rules and that arbitral institutions in all parts of the world would be more inclined to accept acting as appointing authorities if they had the benefit of such guidelines. The Commission also recalled its agreement that the recommendations on the 2010 Rules should follow the same pattern as the 1982 recommendations.[9]

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[5] Ibid., *Thirty-seventh Session, Supplement No. 17* and corrigenda (A/37/17 and Corr.1 and 2), paras. 74-85 and annex I.

[6] Ibid., *Thirty-first Session, Supplement No. 17* (A/31/17), para. 57.

[7] Ibid., *Thirty-sixth Session, Supplement No. 17* (A/36/17), paras. 50-59.

[8] Ibid., *Sixty-fifth Session, Supplement No. 17* (A/65/17), annex I.

[9] Ibid., para. 189.

48. At its forty-fourth session, in 2011, the Commission was informed that the recommendations were under preparation in accordance with the decision of the Commission at its forty-third session, in 2010 (see para. 47 above). At its forty-fourth session, the Commission requested the Secretariat to prepare draft recommendations for consideration by the Commission at a future session, preferably as early as 2012.[10]

49. At its current session, the Commission had before it: (a) draft recommendations to assist arbitral institutions and other interested bodies with regard to arbitration under the UNCITRAL Arbitration Rules as revised in 2010 (A/CN.9/746 and Add.1); and (b) a compilation of comments by Governments on the draft recommendations (A/CN.9/747 and Add.1).

50. The Commission heard an oral presentation on the draft recommendations. The Commission was informed that the draft recommendations had been prepared by the Secretariat after consultation with arbitral institutions, including the circulation to arbitral institutions in various parts of the world of a questionnaire, prepared in cooperation with the International Federation of Commercial Arbitration Institutions, on the use of the UNCITRAL Arbitration Rules. The Commission was also informed that footnote 4 of document A/CN.9/746 contained a list of the institutions that had been involved in the overall consultation process. The Commission was further informed that the Qatar International Center for Conciliation and Arbitration should be added to that list. The Secretariat informed the Commission that an additional footnote should be inserted in paragraph 17 of document A/CN.9/746 after the words "the provisions of article 40 (f) would not apply". The footnote would read as follows:

> "An arbitral institution may, however, retain article 40 (f) for cases in which the arbitral institution would not act as appointing authority. For example, the Qatar International Center for Conciliation and Arbitration states in article 43, paragraph (2) (h), of its Rules of Arbitration 2012 (effective from 1 May 2012), which are based on the UNCITRAL Arbitration Rules as revised in 2010: 'Any fees and expenses of the appointing authority in case the Center is not designated as the appointing authority.'"

51. The Commission requested the Secretariat to continue to monitor the application of the 2010 UNCITRAL Arbitration Rules by arbitral institutions and other bodies.

A. Consideration of the draft recommendations to assist arbitral institutions and other interested bodies with regard to arbitration under the UNCITRAL Arbitration Rules as revised in 2010

52. The Commission expressed its appreciation for the draft Recommendations and emphasized their usefulness for arbitral institutions and other interested bodies in arbitral proceedings.

[10] Ibid., *Sixty-sixth Session, Supplement No. 17* (A/66/17), para. 204.

Appeal to leave the substance of the UNCITRAL Arbitration Rules unchanged

53. A comment was made with regard to the appeal in paragraphs 7 and 8 of document A/CN.9/746 to leave the substance of the UNCITRAL Arbitration Rules unchanged. It was said that it could not be excluded that some arbitral institutions might use the UNCITRAL Arbitration Rules as a basis for their own rules in substance, but without faithfully following the text. In response, it was said that the draft recommendations followed, pursuant to the mandate given to the Secretariat (see para. 47 above), the same pattern as the 1982 recommendations, which contained the same appeal. It was also pointed out that the draft recommendations, like the UNCITRAL Arbitration Rules themselves, were flexible and that the appeal to follow closely the substance of the UNCITRAL Arbitration Rules did not mean to exclude the possibility that particular needs resulting from local circumstances could be taken into account where necessary.

Presentation of modifications

54. A comment was made that arbitration rules were subject to national law and that therefore an arbitral institution might need to tailor the rules according to the arbitration law of the applicable jurisdiction. It was proposed to evaluate whether the list of modifications contained in paragraphs 9-17 of document A/CN.9/746 should also contain a reference in that regard. In response, it was said that the draft Recommendations were subject to the applicable law and not meant to interfere with it.

Effective date

55. Paragraph 11 of document A/CN.9/746 stated that article 1, paragraph (2), of the 2010 UNCITRAL Arbitration Rules defined an effective date for the Rules. The view was expressed that that statement might cause confusion, as article 1, paragraph (2), of the 2010 Rules contained a presumption as to the Rules in effect on the date of commencement of the arbitration. In that light, one delegation proposed to modify the wording of paragraph 11 in order to avoid confusion, but that proposal was not adopted.

Appointment of a sole arbitrator

56. Paragraph 40 of document A/CN.9/746/Add.1 explained the power of the appointing authority under article 7, paragraph (2), of the 2010 UNCITRAL Arbitration Rules to appoint a sole arbitrator when no other parties had responded to a party's proposal to appoint a sole arbitrator and the party or parties concerned had failed to appoint a second arbitrator. It was agreed to replace the words "is requested to" in the fifth sentence of paragraph 40 by the words "will, in any event, have to".

Appointment of a three-member arbitral tribunal

57. Paragraph 44 of document A/CN.9/746/Add.1 referred to factors that an appointing authority might take into consideration when appointing the presiding arbitrator pursuant to article 9, paragraph (3), of the 2010 Rules. In order to follow more closely the wording used in article 6, paragraph (7), of the 2010 Rules, which made reference to the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties, it was agreed to replace the words "to take into

consideration" by the words "that might be taken into consideration". It was also agreed to align the wording "which is recommended to be different from that of the parties", as well as similar wording used in paragraph 38 ("recommends the appointment of an arbitrator of a nationality other than the nationalities of the parties"), with the wording in article 6, paragraph (7), of the 2010 Rules, along the lines of "take into account the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties".

Replacement of an arbitrator

58. It was pointed out that the last sentence of paragraph 53 of document A/CN.9/746/Add.1 was intended to provide examples of exceptional circumstances where a party would be deprived of its right to appoint an arbitrator. In view of the fact that the 2010 Rules refrained from providing criteria for determining such circumstances, it was agreed to delete the last sentence of paragraph 53.

59. In paragraph 54 of document A/CN.9/746/Add.1, in order to clarify that an appointing authority would authorize a truncated tribunal to proceed with the arbitration only after the closure of the hearings, it was agreed to replace the word "If" at the beginning of the second sentence by the words "Bearing in mind that".

60. Paragraph 54 mentioned the applicable law as another factor to be taken into consideration by the appointing authority in determining whether to permit a truncated tribunal to proceed with arbitration under article 14, paragraph (2) (b), of the 2010 Rules. In response to a question, it was clarified that the words "applicable law" were intended to refer to the law applicable to the arbitration proceedings or to the law of the seat of arbitration, and also to the law where enforcement was sought. It was decided to replace the words "relevant applicable law" by the words "relevant laws".

Review mechanism

61. In order to follow more closely the wording of article 41, paragraph (4) (b), of the 2010 Rules, it was agreed to include at the beginning of the penultimate sentence of paragraph 58 of document A/CN.9/746/Add.1 the words "If no appointing authority has been agreed upon or designated, or".

62. The Commission agreed to replace the words "in its review" with the words "if adjustment of fees and expenses is necessary" in the second sentence of paragraph 60 of document A/CN.9/746/Add.1.

63. In view of the importance of the recommendations, the Commission emphasized the need to have them available in both printed and electronic form.

B. Adoption of the recommendations to assist arbitral institutions and other interested bodies with regard to arbitration under the UNCITRAL Arbitration Rules as revised in 2010

64. The Commission, after considering the text of the draft recommendations, adopted the following decision at its 952nd meeting, on 2 July 2012:

"*The United Nations Commission on International Trade Law*,

"*Recalling* General Assembly resolution 2205 (XXI) of 17 December 1966, in which the Assembly established the United Nations Commission on International Trade Law (UNCITRAL) with the object of promoting the progressive harmonization and unification of the law of international trade in the interests of all peoples, in particular those of developing countries,

"*Recalling also* General Assembly resolutions 31/98 of 15 December 1976 and 65/22 of 6 December 2010 recommending the use of the UNCITRAL Arbitration Rules in the settlement of disputes arising in the context of international commercial relations,

"*Recognizing* the value of arbitration as a method of settling such disputes,

"*Noting* that the UNCITRAL Arbitration Rules are recognized as very successful texts and are used in a wide variety of circumstances covering a broad range of disputes, including disputes between private commercial parties, investor-State disputes, State-to-State disputes and commercial disputes administered by arbitral institutions, in all parts of the world,

"*Recognizing* the value of the 1982 recommendations,

"*Recognizing also* the need for issuing recommendations to assist arbitral institutions and other interested bodies with regard to arbitration under the UNCITRAL Arbitration Rules as revised in 2010,

"*Believing* that recommendations to assist arbitral institutions and other interested bodies with regard to arbitration under the UNCITRAL Arbitration Rules as revised in 2010 will significantly enhance the efficiency of arbitration under the Rules,

"*Noting* that the preparation of the draft recommendations was the subject of due deliberation and consultations with Governments, arbitral institutions and interested bodies,

"*Expressing its appreciation* to the Secretariat for formulating the draft recommendations,

"*Convinced* that the draft recommendations as amended by the Commission at its forty-fifth session are acceptable to arbitral institutions and other interested bodies in countries with different legal, social and economic systems and can significantly contribute to the establishment of a harmonized legal framework for a fair and efficient settlement of international commercial disputes and to the development of harmonious international economic relations,

"1. *Adopts* the recommendations to assist arbitral institutions and other interested bodies with regard to arbitration under the UNCITRAL Arbitration Rules as revised in 2010;[11]

"2. *Recommends* the use of the recommendations in the settlement of disputes arising in the context of international commercial relations;

[11] Ibid., *Sixty-seventh session, Supplement No. 17* (A/67/17), annex I.

"3. *Requests* the Secretary-General to transmit the recommendations broadly to Governments with the request that they be made available to arbitral institutions and other interested bodies so that the recommendations become widely known and available;

"4. *Also requests* the Secretary-General to publish the recommendations, including electronically, and to make every effort to ensure that they become generally known and available."

V. Arbitration and conciliation

A. Progress report of Working Group II

65. In accordance with a decision of the Commission at its forty-third session,[12] in 2010, Working Group II (Arbitration and Conciliation) commenced its work on the preparation of a legal standard on transparency in treaty-based investor-State arbitration at its fifty-third session, held in Vienna from 4 to 8 October 2010, and continued it at its fifty-fourth session, held in New York from 7 to 11 February 2011; its fifty-fifth session, held in Vienna from 3 to 7 October 2011; and its fifty-sixth session, held in New York from 6 to 10 February 2012.

66. At its current session, the Commission had before it the reports of the Working Group on its fifty-fifth and fifty-sixth sessions (A/CN.9/736 and A/CN.9/741, respectively). The Commission noted that the Working Group, at its fifty-fifth session, had completed its first reading of the draft legal standard on transparency in treaty-based investor-State arbitration, on the basis of notes prepared by the Secretariat (A/CN.9/WG.II/WP.166 and Add.1 and A/CN.9/WG.II/WP.167). The Commission also noted, that, at its fifty-sixth session, the Working Group had commenced its second reading of the draft legal standard, on the basis of notes prepared by the Secretariat (A/CN.9/WG.II/WP.169 and Add.1 and A/CN.9/WG.II/WP.170 and Add.1).

67. The Commission commended the Secretariat for the quality of the documentation prepared for the Working Group. Concerns were voiced about the progress of the Working Group because discussions at its fifty-sixth session on article 1 of the draft rules had focused mainly on the scope of application of the rules on transparency, which some delegations described as merely a matter of form (see A/CN.9/741, paras. 13-102). Some delegations asked that the Working Group should be requested to finish its work for consideration by the Commission at its forty-sixth session. In response, it was said that the decision on the scope of application was a very complex and delicate issue and not merely a matter of form, as it would have an impact on the content of the rules. The complexity of the matter could be ascertained by reading paragraph 59 of the report of the Working Group on its fifty-sixth session. It was said that bridging the gap between the different opinions in the Working Group on the scope of applicability would require creative solutions and that the Working Group should not be rushed unnecessarily.

[12] Ibid., *Sixty-fifth Session, Supplement No. 17* (A/65/17), paras. 190-191.

68. It was pointed out that the matter of applicability of the rules on transparency under existing and future investment treaties were complex and delicate issues and should be carefully considered. Those were matters of treaty interpretation, and it was re-emphasized that, when creating delegations to the Working Group sessions devoted to that project, member States and observers should seek to achieve the highest level of expertise in treaty law and treaty-based investor-State arbitration.[13]

69. The Commission reaffirmed the importance of ensuring transparency in treaty-based investor-State arbitration, as highlighted at its forty-first session, in 2008, and at its forty-fourth session, in 2011,[14] and urged the Working Group to pursue its efforts and to complete its work on the rules on transparency for consideration by the Commission, preferably at its forty-sixth session.

B. Future work in the field of settlement of commercial disputes

70. The Commission recalled its agreement at its forty-fourth session, in 2011, that the 1996 UNCITRAL Notes on Organizing Arbitral Proceedings[15] needed to be updated pursuant to the adoption of the 2010 UNCITRAL Arbitration Rules.[16] At its current session, it was suggested that the Working Group should receive a mandate to that end. After discussion, the Commission confirmed that the Secretariat should undertake the revision of the Notes as its next task in the field of dispute settlement, as previously decided by the Commission. The Commission agreed to decide at a future session whether the draft revised Notes should be first examined by the Working Group before being considered by the Commission.

VI. Online dispute resolution: progress report of Working Group III

71. The Commission recalled its previous discussions of online dispute resolution[17] and expressed its appreciation for the progress made by its Working Group III (Online Dispute Resolution), as reflected in the reports of the Working Group on its twenty-fourth and twenty-fifth sessions (A/CN.9/739 and A/CN.9/744, respectively). The Commission commended the Secretariat for the working papers and reports prepared for those sessions.

72. The Commission recalled that, at its forty-fourth session, in 2011, it had reaffirmed the mandate of the Working Group relating to cross-border business-to-business and business-to-consumer electronic transactions. At that session, the Commission had decided that in general terms, in the implementation of its mandate, the Working Group should also consider specifically the impact of its

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[13] Ibid., *Sixty-third Session, Supplement No. 17* and corrigendum (A/63/17 and Corr.1), para. 314; and ibid., *Sixty-fourth Session, Supplement No. 17* (A/64/17), para. 290.

[14] Ibid., *Sixty-third Session, Supplement No. 17* and corrigendum (A/63/17 and Corr.1), para. 314; and ibid., *Sixty-sixth Session, Supplement No. 17* (A/66/17), para. 200.

[15] Ibid., *Fifty-first Session, Supplement No. 17* (A/51/17), chap. II.

[16] Ibid., *Sixty-sixth Session, Supplement No. 17* (A/66/17), para. 207.

[17] Ibid., *Sixty-fourth Session, Supplement No. 17* (A/64/17), paras. 338 and 341-343; ibid., *Sixty-fifth Session, Supplement No. 17* (A/65/17), paras. 252-257; and ibid., *Sixty-sixth Session, Supplement No. 17* (A/66/17), paras. 213-218.

deliberations on consumer protection and that it should report to the Commission at its forty-fifth session.[18]

73. At its current session, the Commission noted the progress that had been made in respect of the Working Group's continued deliberations on the draft procedural rules on dispute resolution for cross-border electronic transactions. The Commission took note of the Working Group's decision to restructure the commencement provisions of article 4 of the draft rules and to reconsider those provisions at a future meeting. The Commission further noted that the Working Group intended, upon completing its initial review of the draft rules, to consider the principles that ought to apply to online dispute resolution providers and neutrals.

74. In response to the Commission's request that the Working Group report on the impact of its deliberations on consumer protection, the Commission took note of the Working Group's mindfulness of consumer protection issues throughout its deliberations, as well as the perceived benefits of online dispute resolution in promoting interaction and economic growth within and between regions, including in post-conflict situations and in developing countries. Views were expressed that the Working Group had not yet fully reported to the Commission on the effects on consumer protection, especially when the consumer was the respondent in a dispute. Views were also expressed that the report of the Working Group to the Commission was sufficient in that regard.

75. It was pointed out that it was important to build confidence for consumers and vendors in developing and developed countries and in post-conflict situations and that small businesses would not be able to seek redress in their own States against foreign consumers.

76. Views were expressed that a global system for online dispute resolution must provide for final and binding decisions by way of arbitration and that such a system would be of great benefit to developing countries and countries in post-conflict situations for the following reasons:

(a) It would improve access to justice by providing an efficient, low-cost and reliable method of dispute resolution where, in many cases, trusted and functioning judicial mechanisms did not exist to deal with disputes arising from cross-border electronic commerce transactions;

(b) That in turn would contribute to economic growth and the expansion of cross-border commerce, instilling confidence in parties to such transactions that their disputes could be handled in a fair and timely manner;

(c) It would enable greater access to foreign markets for small and medium-sized enterprises in developing countries and, in the event of a dispute, mitigate their disadvantage when dealing with more commercially sophisticated parties in other countries that had access to greater legal and judicial resources.

77. The following views were also expressed:

(a) As regards business-to-consumer disputes, a system involving binding decisions, to the extent it removed a party's access to national courts, would detract from the rights of consumers;

[18] Ibid., *Sixty-sixth Session, Supplement No. 17* (A/66/17), para. 218.

(b) If the online dispute resolution rules provided for arbitration for business-to-consumer disputes, problems would arise at the stage of recognition and enforcement of online dispute resolution decisions in that the process did not provide for the requisites for enforcement by way of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards,[19] done at New York on 10 June 1958;

(c) A suitable approach could be to make decisions binding upon only companies or sellers and not upon consumers.

78. Other suggestions were that consideration should be given to fixing a range of maximum values for disputed transactions dealt with by online dispute resolution, based on the type or category of transaction at issue (airfares were given as an example of a higher-cost purchase) and that the Rules should offer parties a choice of forum.

79. After discussion, the Commission decided that:

(a) The Working Group should consider and report back at a future session of the Commission on how the draft rules would respond to the needs of developing countries and those facing post-conflict situations, in particular with regard to the need for an arbitration phase to be part of the process;

(b) The Working Group should continue to include in its deliberations the effects of online dispute resolution on consumer protection in developing and developed countries and countries in post-conflict situations, including in cases where the consumer was the respondent party in an online dispute resolution process;

(c) The Working Group should continue to explore a range of means of ensuring that online dispute resolution outcomes were effectively implemented, including arbitration and possible alternatives to arbitration;

(d) The mandate of the Working Group on online dispute resolution in respect of low-value, high-volume cross-border electronic transactions was reaffirmed, and the Working Group was encouraged to continue to conduct its work in the most efficient manner possible.

VII. Electronic commerce: progress report of Working Group IV

80. The Commission recalled that at its forty-fourth session, in 2011, it had mandated Working Group IV (Electronic Commerce) to undertake work in the field of electronic transferable records. It was further recalled that the Commission had noted that such work might include certain aspects of other topics, such as identity management, the use of mobile devices in electronic commerce and electronic single window facilities.[20]

81. At its current session, the Commission noted that the Working Group had commenced its work in the field of electronic transferable records at its

[19] United Nations, *Treaty Series*, vol. 330, No. 4739.

[20] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 17* (A/66/17), paras. 235 and 238.

forty-fifth session, held in Vienna from 10 to 14 October 2011. It was also noted that the forty-sixth session of the Working Group, which had been scheduled to take place either in New York from 13 to 17 February 2012 or in Vienna from 9 to 13 January 2012, had had to be cancelled to allow the Secretariat to gather the information needed for the preparation of the necessary working documents, as well as owing to the uncertainty that had existed until the end of 2011 regarding the retention of the alternating pattern of UNCITRAL meetings.

82. The Commission expressed its appreciation to the Working Group for the progress made, as reflected in the report on its forty-fifth session (A/CN.9/737) and commended the Secretariat for its work.

83. While it was noted that consultations had evidenced no business demand for electronic transferable records in one State, owing partly to the perceived risks of abuse, it was also noted that consultations were ongoing in other States. There was general support for the Working Group continuing its work on electronic transferable records. In that context, the desirability of identifying and focusing on specific types of or specific issues related to electronic transferable records was urged. The need for an international regime to facilitate the cross-border use of electronic transferable records was emphasized.

84. The Commission was informed that, for the forty-sixth session of the Working Group, the Governments of Colombia, Spain and the United States had transmitted a paper setting out the current practices on electronic transferable records and related business needs.

85. The Commission took note of other developments in the field of electronic commerce. It welcomed Economic and Social Commission for Asia and the Pacific (ESCAP) resolution 68/3, on enabling paperless trade and the cross-border recognition of electronic data and documents for inclusive and sustainable intraregional trade facilitation, adopted by ESCAP at its sixty-eighth session, held in Bangkok from 17 to 23 May 2012.[21] The Commission noted that, in that resolution, ESCAP encouraged all members and associate members of ESCAP to take into account, and whenever possible adopt, available international standards prepared by relevant United Nations bodies, such as UNCITRAL and other international organizations, to facilitate the interoperability of such systems. UNCITRAL requested the Secretariat to work closely with ESCAP, including through the UNCITRAL Regional Centre for Asia and the Pacific.

86. With respect to legal issues relating to electronic single window facilities, the Commission welcomed the ongoing cooperation between its secretariat and other organizations. In particular, the Commission welcomed "Electronic single window legal issues: a capacity-building guide", prepared jointly by the United Nations Network of Experts for Paperless Trade in Asia and the Pacific (UNNExT), ESCAP and the Economic Commission for Europe (ECE), with substantive contribution from the UNCITRAL secretariat.

87. The Commission took note of a statement by the secretariat of the World Customs Organization in which it noted the growing importance of single window facilities for trade facilitation, including at the cross-border level and with respect to

[21] *Official Records of the Economic and Social Council, 2012, Supplement No. 19* (E/2012/39).

business-to-business exchanges and welcomed the contribution of the Commission in establishing related legal standards. In its statement, the secretariat also noted the progress of the work of the Working Group on electronic transferable records and stressed the importance of the availability of those records in order to increase the quality of the data submitted to single window facilities, and therefore of a uniform predictable legal framework to facilitate that submission. Finally, the secretariat welcomed the role of the Commission in coordinating the various bodies active in the field of legal standards for electronic commerce, thus preparing a harmonized legal framework able to complement similar efforts taking place at the technical level.

88. The Commission was informed about recent developments regarding cooperation between UNCITRAL and the United Nations Centre for Trade Facilitation and Electronic Business (CEFACT), with particular regard to CEFACT draft recommendation No. 37 on Signed Digital Document Interoperability. In that regard, the Commission took note of the decision by CEFACT at its eighteenth session, held in Geneva from 15 to 17 February 2012, to initiate work to establish a framework for the ongoing governance of digital signature interoperability in coordination with UNCITRAL, the International Organization for Standardization (ISO) and other relevant organizations. The Commission requested the Secretariat to take appropriate steps to cooperate with CEFACT, possibly involving the Working Group.

89. With respect to legal issues relating to identity management, the Commission was informed that ABA had submitted a paper for possible discussion at the forty-sixth session of the Working Group in which it provided an overview of identity management, its role in electronic commerce and relevant legal issues, as well as barriers.

90. After discussion, the Commission reaffirmed the mandate of the Working Group relating to electronic transferable records and requested the Secretariat to continue reporting on relevant developments relating to electronic commerce.

VIII. Insolvency law: progress report of Working Group V

91. The Commission recalled that, at its forty-third session, in 2010, it had endorsed the recommendation by its Working Group V (Insolvency Law) contained in document A/CN.9/691, paragraph 104, that activity be initiated on two topics, both of which were of current importance and where a greater degree of harmonization of national approaches would be beneficial in delivering certainty and predictability. Those topics were: (a) guidance on the interpretation and application of selected concepts of the UNCITRAL Model Law on Cross-Border Insolvency[22] relating to centre of main interests and possible development of a model law or provisions on insolvency law addressing selected international issues, such as jurisdictions, access and recognition, in a manner that would not preclude

[22] *Official Records of the General Assembly, Fifty-second Session, Supplement No. 17* (A/52/17), annex I.

the development of a convention; and (b) responsibility of directors of an enterprise in the period approaching insolvency.[23]

92. The Working Group commenced its work on both topics at its thirty-ninth session, held in Vienna from 6 to 10 December 2010, and continued its deliberations at its fortieth session, held in Vienna from 31 October to 4 November 2011, and forty-first session, held in New York from 30 April to 4 May 2012. The Commission had before it the reports of the Working Group on the work of its fortieth and forty-first sessions (A/CN.9/738 and A/CN.9/742, respectively).

93. At its current session, the Commission noted the progress that had been made with respect to both topics mentioned in paragraph 91 above and that the work on topic (a) was well advanced and might be completed in time for consideration and adoption by the Commission at its forty-sixth session, in 2013. The Commission also noted that, while that work would take the form of revisions to the Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency,[24] it would not change the text of the Model Law itself, but rather provide guidance on its use and interpretation.

94. The Commission further noted that, while the Working Group had considered the possibility of adding material on enterprise groups to the Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency, notwithstanding that the Model Law did not apply to enterprise groups as such, it had been agreed that references could be included to part three of the UNCITRAL Legislative Guide on Insolvency Law,[25] which specifically addressed the treatment of enterprise groups.

95. The Commission expressed its appreciation for the progress made by the Working Group, as reflected in the reports on its fortieth and forty-first sessions, and commended the Secretariat for the excellent working papers and reports prepared for those sessions.

96. The Commission further considered an issue relating to the draft text on topic (a) in paragraph 91 above that had been discussed by the Working Group at its forty-first session (A/CN.9/742, paras. 12-72). That text drew upon material contained in the UNCITRAL Model Law on Cross-Border Insolvency: the Judicial Perspective,[26] adopted by the Commission at its forty-fourth session,[27] in 2011. To the extent that the text currently being developed by the Working Group built upon and revised material included in the Judicial Perspective, in particular with respect to the interpretation and application of "centre of main interests", the Commission agreed that the Judicial Perspective should be revised in parallel with the current work of the Working Group to ensure consistency and, if possible, should be submitted to the Commission for adoption at the same time as the new text on topic (a) in paragraph 91 above.

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[23] Ibid., *Sixty-fifth Session, Supplement No. 17* (A/65/17), para. 259.

[24] United Nations publication, Sales No. E.99.V.3.

[25] Available from www.uncitral.org/uncitral/en/uncitral_texts/insolvency.html.

[26] Available from www.uncitral.org/uncitral/en/uncitral_texts/insolvency.html.

[27] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 17* (A/66/17), para. 198.

IX. Security interests: progress report of Working Group VI

97. The Commission recalled its previous discussions on the preparation of a text on the registration of security rights in movable assets.[28] At its current session, the Commission had before it the reports of Working Group VI (Security Interests) on the work of its twentieth session, held in Vienna from 12 to 16 December 2011, and its twenty-first session, held in New York from 14 to 18 May 2012 (A/CN.9/740 and A/CN.9/743, respectively).

98. The Commission noted that, at its twentieth session, the Working Group had agreed that the text being prepared should take the form of a guide (the draft Registry Guide), with commentary and recommendations along the lines of the UNCITRAL Legislative Guide on Secured Transactions[29] and, where the draft Registry Guide offered options, provide examples of model regulations in an annex (A/CN.9/740, para. 18). It was also noted that the Working Group had agreed that the draft Registry Guide should be presented as a separate, stand-alone, comprehensive text that would be consistent with the Secured Transactions Guide.

99. The Commission further noted that the Working Group, at its twenty-first session, had approved the substance of the recommendations of the draft Registry Guide, as well as examples of registration forms. It was noted that the Working Group had agreed that the draft Registry Guide should be finalized and submitted to the Commission for adoption at its forty-sixth session, in 2013 (A/CN.9/743, para. 73).

100. The Commission expressed its appreciation to the Working Group for the considerable progress achieved in its work and to the Secretariat for its efficient support. The Commission requested the Working Group to proceed with its work expeditiously and to complete its work so that the draft Registry Guide would be submitted to the Commission for final approval and adoption at its forty-sixth session, in 2013.

101. As to future work, the Commission noted that the Working Group, at its twenty-first session, had agreed to propose to the Commission that the Working Group should develop a model law on secured transactions based on the general recommendations of the Secured Transactions Guide and consistent with all the texts prepared by UNCITRAL on secured transactions. It was also noted that the Working Group had agreed to propose to the Commission that the topic of security rights in non-intermediated securities should be retained on its work agenda and be considered at a future session (A/CN.9/743, para. 76).

102. The Commission recalled that, at its forty-third session, in 2010, it had agreed that the topics mentioned above should be retained in the programme of the Working Group for further consideration by the Commission at a future session.[30] In that context, the Commission considered the proposals by the Working Group.

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[28] Ibid., paras. 223-226.

[29] United Nations publication, Sales No.E.09.V.12.

[30] *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17* (A/65/17), paras. 267 and 268.

103. It was widely felt that a simple, short and concise model law on secured transactions could usefully complement the Secured Transactions Guide and would be extremely useful in addressing the needs of States and in promoting implementation of the Secured Transactions Guide. While a concern was expressed that a model law might limit the flexibility of States to address the local needs of their legal traditions, it was generally viewed that a model law could be drafted in a sufficiently flexible manner to adapt to various legal traditions. Moreover, there was support for the idea that a model law could greatly assist States in addressing urgent issues relating to access to credit and financial inclusion, in particular for small and medium-sized enterprises.

104. As to the topic of security rights in non-intermediated securities, it was widely felt that the topic merited further consideration. The Commission noted that non-intermediated securities, in the sense of securities other than those credited to a securities account, were used as security for credit in commercial financing transactions yet were excluded from the scope of the Secured Transactions Guide (see recommendation 4, subparas. (c)-(e) of the Guide), the 2009 Unidroit Convention on Substantive Rules for Intermediated Securities[31] and the 2006 Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary.

105. After discussion, the Commission agreed that, upon its completion of the draft Registry Guide, the Working Group should undertake work to prepare a simple, short and concise model law on secured transactions based on the general recommendations of the Secured Transactions Guide and consistent with all texts prepared by UNCITRAL on secured transactions. It was also agreed that, consistent with the Commission's decision at its forty-third session, in 2010 (see para. 102 above), the topic of security rights in non-intermediated securities, in the sense of securities other than those credited in a securities account, should continue to be retained on the future work programme for further consideration, on the basis of a note to be prepared by the Secretariat, which would set out all relevant issues so as to avoid any overlap or inconsistency with texts prepared by other organizations.

X. Possible future work in the area of public procurement and related areas

106. The Commission had before it a note by the Secretariat on possible future work in the areas of procurement and infrastructure development (A/CN.9/755). The Commission also heard a statement of the observer for the Vale Columbia Centre on Sustainable International Investment about the work of the Centre, in particular its empirical research into infrastructure development and public-private partnerships, which could be made available to the Commission.

107. The understanding was that the final decision on the agenda item should be taken after the Commission had considered a note by the Secretariat on a strategic direction for UNCITRAL (A/CN.9/752; see paras. 228-232 below) and agenda items on possible future work in other areas of work (microfinance and international contract law) (see paras. 124-132 below). The general view was that UNCITRAL

[31] Available from www.unidroit.org/english/conventions/2009intermediatedsecurities/main.htm.

should focus on areas in which the preparation of law (treaties or model laws) would be justified.

108. As regards the topics relating to possible future work in public procurement listed in document A/CN.9/755, the general view was that some of the topics identified did not lend themselves to treatment in a model law or other legal text; other topics might be appropriate for legislative development, but it would not be practical to reopen procurement-related issues at this time, given that the work on the 2011 Model Law and its Guide to Enactment had just been completed (see para. 46 above). The view was expressed that the 2011 Model Law was in many respects ahead of existing procurement practices and legislation in a number of countries; it was therefore important for procurement practices and legislation to develop first to allow for the assessment of the 2011 Model Law and the need to amend it.

109. Specifically, the Commission was of the view that:

(a) Contract administration was an important area, but one in which providing information on best practices and capacity-building was more appropriate than the development of legal texts. The question was raised whether the work of UNCITRAL in that area would be of added value, given the text that had already been issued by UNCITRAL on industrial contracts[32] and the texts of other organizations, such as the International Federation of Consulting Engineers;

(b) Many issues with regard to procurement planning raised questions of public law (e.g. the budget law and regulations of a given State) that were outside the purview of UNCITRAL. The interest of some countries in an international model addressing procurement planning and the importance of proper procurement planning for the proper handling and outcome of the entire procurement process were, however, noted;

(c) Although issues of suspension and debarment were important legal matters that UNCITRAL could address, they were examples of issues that would not be appropriate to address through legislative work at this stage;

(d) Corporate compliance was not considered to be an issue that lent itself to work by UNCITRAL; it was considered to be an issue of good behaviour and best practice;

(e) Sufficiently flexible mechanisms were built into the 2011 Model Law to accommodate sustainability and environmental protection through public procurement, with the Guide providing guidance on how those mechanisms could be used. Generally, the preparation of further legal texts on those issues would not be justifiable; more detailed guidance on how the available mechanisms were to be used in practice might be necessary. The importance of building the required capacity to use such mechanisms was noted.

110. To accommodate the interest of States in some of the above topics, the Commission agreed to explore the possibility of issuing guidance papers (as opposed to any further legislative texts) on such topics as: (a) procurement

[32] *UNCITRAL Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works*, United Nations publication (Sales No. E.87.V.10).

planning; (b) measures that could be used by the public and private sectors to promote maximum competition in public procurement (e.g. mitigating risks of collusion and addressing issues of centralized procurement and difficulties with the access of small and medium-sized enterprises to public procurement, including those arising from the introduction of e-procurement); (c) specific recommendations to ensure harmonization between the 2011 Model Law and other branches of law (e.g. on corporations and environmental protection); (d) cost-benefit analyses and other considerations, such as infrastructure and capacity needed, in the use of procurement methods and techniques under the Model Law (poor results in the use of framework agreements in particular were reported); and (e) sustainability and environmental issues in public procurement.

111. The dissemination of and increasing the understanding of the 2011 Model Law and its Guide to Enactment were considered to be of utmost importance in order to achieve proper implementation, interpretation and use of the 2011 Model Law. The examples suggested of possible ways to do that included the publication of documents on the UNCITRAL website and the use of blogs and interactive online forums. The use of a network of national correspondents, as existed for the system for collecting and disseminating information on court decisions and arbitral awards relating to UNCITRAL texts (the CLOUT system), was mentioned as a further relevant tool. Further, establishing partnerships with organizations and experts familiar with the 2011 Model Law and capable of assisting the UNCITRAL secretariat with online and in-person training, teaching and technical assistance activities, as well as collection and dissemination of information about the use of the text, was considered essential in the light of the limited resources available in the UNCITRAL secretariat. Such activities would also allow the evaluation of the procurement systems of various jurisdictions; results of such evaluation would be used in the assessment of the need to make improvements to, for example, the Guide, and any suggestions for improvements would be brought to the attention of the Commission. In the light of experiences showing the difficulties that officials had encountered in seeking to implement the 1994 Model Law and to ensure that its provisions were appropriately followed in practice, the Commission was urged to support the effective implementation and use of the 2011 Model Law through such measures.

112. Establishing a mechanism for sharing experiences and best practices was considered to be a part of work on monitoring the use of the 2011 Model Law. An example of sharing best practices regarding harnessing the potential benefits of e-procurement described in document A/CN.9/WG.I/WP.79/Add.1, paragraphs 28-30, was provided to the Commission: in partnership with the United Nations Office on Drugs and Crime (the custodian of the United Nations Convention against Corruption),[33] the Government of Nigeria had engaged in the development of an e-procurement system to reduce the possibility of corruption and abuse by removing human contact and enhancing transparency.

113. After discussion, the Commission decided that it would not be possible to assess the need for guidance papers or decide the best manner of encouraging enactment of the 2011 Model Law and ensuring its optimum implementation, interpretation and use without a more in-depth understanding of the relevant

[33] United Nations, *Treaty Series*, vol. 2349, No. 42146.

activities and publications of other international and regional organizations, and individual States, in public procurement.

114. The Commission therefore instructed the Secretariat to undertake a study of (a) existing resources and publications of other bodies that might be made available to support the implementation, interpretation and use of the 2011 Model Law; (b) how to arrange ongoing collaboration with such other bodies; (c) topics that were not yet adequately covered and that might warrant guidance papers as suggested in paragraph 110 above; and (d) options for publishing and publicizing the various resources and papers themselves. The understanding was that such a study would be made available to the Commission at its forty-sixth session, in 2013, and that the study would also consider the extent to which such activities would be feasible and the extent to which additional resources would be necessary, given the need to review information received on the implementation, interpretation and use of the 2011 Model Law, translate necessary information and ensure consistency among any external resources referred to and the 2011 Model Law and its Guide. The Commission was of the view that, after considering such a study, it would be in a position to assess the need for further work on any discrete topic.

115. As regards possible future work in the area of public-private partnerships, it was suggested that developing a model law on public-private partnerships at the international level might be desirable in the light of the importance of the subject to developing countries; that the work in that area might in particular be justified in the light of the conclusions reached by States at the United Nations Conference on Sustainable Development, held in Rio de Janeiro, Brazil, from 20 to 22 June 2012, that encouraged the use of public-private partnerships as a tool for economic development;[34] and that UNCITRAL could benefit from the work in the same area being undertaken at the regional level, such as a proposal from the European Commission for a directive of the European Parliament and of the Council on the award of concession contracts.[35]

116. The Commission agreed that the development of any future texts in the area of public-private partnerships should be undertaken through a working group and the Commission so as to ensure inclusivity and transparency and hence the universal applicability of any such texts.

117. The Commission agreed that further consideration of the following topics related to public-private partnerships listed in document A/CN.9/755 might be warranted: (a) oversight mechanisms (in both the selection phase and the contract management phase) and the promotion of domestic dispute prevention and resolution mechanisms in the context of public-private partnerships; and (b) the possible expansion of the scope of the UNCITRAL instruments on privately

[34] See the outcome document of the Conference, entitled "The future we want" (General Assembly resolution 66/288, annex), paras. 46, 71, 217 and 280 (d).

[35] Available from http://ec.europa.eu/commission_2010-2014/barnier/headlines/news/2011/12/20111220_en.htm.

financed infrastructure projects[36] to include forms of private financing and related transactions not currently covered in those instruments.

118. As regards oversight and domestic dispute settlement, it was emphasized that those topics should be considered together, consistent with the approach to them taken at the 2007 UNCITRAL congress entitled "Modern Law for Global Commerce", that developing local capacity to handle disputes arising from public-private partnerships should be considered, that the development of a model law on those subjects could contribute significantly to the development of such capacity and that the topics should include dispute preventive mechanisms and, in that regard, should be aimed at developing regulations that were responsive to the needs of the private sector by providing an opportunity to investors to comment on the development of rules and regulations that were applicable to them.

119. The Commission noted that other issues not currently addressed in the UNCITRAL instruments on privately financed infrastructure projects might also be appropriately included in any future work on public-private partnerships, together with other issues, such as preventing a contractor from selling the subject of a concession to another entity without the consent of the Government.

120. Noting that further consideration of whether future work in public-private partnerships would be warranted would require additional research and a detailed study by the Secretariat, the Commission agreed that holding a colloquium to identify the scope of possible work and primary issues to be addressed would be helpful. It emphasized the importance of defining the scope of the colloquium in advance, using the provisions of the UNCITRAL instruments on privately financed infrastructure projects to identify needs for possible additional work. In preparation for a colloquium, the Secretariat would therefore need to define the possible topics for discussion at the colloquium itself, drawing on the resources of other bodies, including those that had offered to assist in that regard, and based on the deliberations at the current session. The results of the colloquium would thereafter be presented to the Commission for its consideration. In that regard, it was also agreed that it would be essential for there to be a clear mandate for any future work in that area.

121. It was agreed that, although UNCITRAL might not therefore commence any work on public-private partnerships in the near future, the Commission should signal to the international community its interest in involvement in further work in that area. The importance of coordination and cooperation between relevant bodies on ongoing work in that area was emphasized, including as regards the proper scheduling of any work by UNCITRAL.

122. As regards the suggestions in document A/CN.9/755 that the UNCITRAL instruments on privately financed infrastructure projects should be consolidated and that the procurement-related provisions in those instruments should be conformed with the provisions regulating relevant procurement methods in the 2011 Model Law, it was agreed that those tasks should be undertaken, but not as separate

[36] UNCITRAL Model Legislative Provisions on Privately Financed Infrastructure Projects (*Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 17* (A/58/17), annex I); and UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects (United Nations publication, Sales No. E.01.V.4).

projects by a UNCITRAL working group, given their limited scope and the mechanical nature of some parts of the work concerned. A decision on whether to undertake them would therefore be taken following the colloquium (see para. 120 above), which would define the scope of the other aspects of work on public-private partnerships.

123. It was agreed that the implication of the above approach was that there would be no need for Working Group I to meet before the forty-sixth session of the Commission, in 2013, and that a colloquium should not be held before the second quarter of 2013.

XI. Possible future work in the area of microfinance

124. The Commission recalled its previous discussions on possible work in the area of microfinance,[37] in particular the decision taken at its forty-fourth session, in 2011, to include microfinance as an item for the future work of UNCITRAL and to further consider the matter at its forty-fifth session, in 2012.[38] At its forty-fourth session, the Commission, in order to define the areas where work was needed, requested the Secretariat to circulate to all States a short questionnaire regarding their experiences with the establishment of a legislative and regulatory framework for microfinance, including any obstacles they might have encountered in that regard. Further, the Commission agreed that the Secretariat should, resources permitting, undertake research on the following items: (a) overcollateralization and the use of collateral with no economic value; (b) electronic money, including its status as savings, whether its "issuers" were engaged in banking (and hence what type of regulation they were subject to) and the coverage of such funds by deposit insurance schemes; (c) provision for fair, rapid, transparent and inexpensive processes for the resolution of disputes arising from microfinance transactions; and (d) facilitating the use of, and ensuring transparency in, secured lending to microenterprises and small and medium-sized enterprises.[39]

125. At its current session, the Commission had before it a note by the Secretariat (A/CN.9/756) containing a short summary of the state of the matter in each of the four topics identified by the Commission at its forty-fourth session (see para. 124 above) and suggestions for possible future work of UNCITRAL on each of those topics. The Commission noted that a report analysing the responses received from States to the questionnaire that had been circulated by the Secretariat to States pursuant to the request of the Commission at its forty-fourth session would be submitted to the Commission at its forty-sixth session, in 2013.

126. The Commission voiced strong support for a suggestion to further explore, including by means of a colloquium, particular issues relevant to, inter alia, facilitating access to credit for micro-businesses and small businesses, particularly in developing economies. After discussion, it was unanimously agreed that one or more colloquiums on microfinance and related matters would be held, possibly in

[37] *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 17* (A/64/17), paras. 432 and 433; ibid., *Sixty-fifth Session, Supplement No. 17* (A/65/17), paras. 275-276 and 280; and ibid., *Sixty-sixth Session, Supplement No. 17* (A/66/17), paras. 241-246.

[38] Ibid., *Sixty-sixth Session, Supplement No. 17* (A/66/17), para. 246.

[39] Ibid.

different regions, with a focus on: facilitating simplified business incorporation and registration; access to credit for micro-businesses and small and medium-sized enterprises; dispute resolution applicable to microfinance transactions; and other topics related to creating an enabling legal environment for micro-businesses and small and medium-sized enterprises. The Commission agreed that the holding of such a colloquium should rank as a first priority for UNCITRAL in the coming year.

XII. Possible future work by UNCITRAL in the area of international contract law

127. The Commission considered the desirability of work in the area of international contract law on the basis of a proposal by Switzerland on possible future work in the area of international contract law (A/CN.9/758).

128. That proposal recognized the Commission's contributions to harmonization in that field. In particular, it stressed that the United Nations Convention on Contracts for the International Sale of Goods (1980),[40] with 78 States parties, had a global impact in unifying the law on contracts for the sale of goods. The proposal noted, however, that many areas relating to contracts for sale of goods, as well as to general contract law, were still left to domestic law and that that created an obstacle to international trade by multiplying the number of potentially applicable legal regimes and associated transaction costs. Moreover, it was explained, the need to access legal materials on foreign laws in different languages or to get expert advice from a foreign jurisdiction created additional challenges and expenses. Those expenses, it was added, were particularly onerous on small and medium-sized enterprises.

129. For those reasons, it was suggested that, with a view to allowing the Commission to make an informed decision on possible future work for further harmonization of contract law, the Secretariat could organize colloquiums and other meetings, as appropriate and within available resources, and report on the desirability and feasibility of such possible future work at a future session of the Commission. It was emphasized that such exploratory activities should not only take into account but also build on existing instruments, such as the United Nations Sales Convention and the Unidroit Principles of International Commercial Contracts.[41] It was further indicated that such work could usefully complement ongoing efforts with respect to contract law modernization at the regional and national levels.

130. In reply, it was said that it was not evident that existing instruments were inadequate in actual practice, that the proposal seemed unclear and overly ambitious and that it could potentially overlap with existing texts, such as the Unidroit Principles of International Commercial Contracts. It was added that lacunae in existing texts, such as the United Nations Sales Convention, were a result of the impossibility of finding an agreed compromise solution and that there were significant doubts that that could be overcome in the near future. Concerns were also expressed about the implications of such a vast project on the human and financial resources available to the Commission and to States. For those reasons, it

[40] United Nations, *Treaty Series*, vol. 1489, No. 25567.

[41] Available from www.unidroit.org.

was urged that the proposed work should not be undertaken, at least not at the present time. It was added that the Commission might reconsider the matter at a future date in the light of possible developments.

131. In response to a concern that had been expressed regarding possible duplication of effort with respect to the work of Unidroit, it was indicated by the Secretariat and the observer for Unidroit that such a project, should the Commission decide to consider it further, could be dealt with in a collaborative manner, involving the two organizations, as well as additional relevant external contributors.

132. After discussion, it was determined that there was a prevailing view in support of requesting the Secretariat to organize symposiums and other meetings, including at the regional level and within available resources, maintaining close cooperation with Unidroit, with a view to compiling further information to assist the Commission in the assessment of the desirability and feasibility of future work in the field of general contract law at a future session. Many delegates, however, urged that priority should be given to other work of the Commission, in particular in the area of microfinance. A number of delegates expressed clear opposition and strong reservations with regard to further work in the field of general contract law. In addition, several delegates, noting the significant opposition to the proposal by Switzerland, objected to the characterization of the debate on that topic as reflecting a prevailing majority view in favour of additional work.

XIII. Preparation of a guide on the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards

133. The Commission recalled its previous discussions on monitoring implementation of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958.[42] The Commission further recalled that it had been informed, at its forty-fourth session, in 2011, that the Secretariat was carrying out two complementary projects in that regard.[43]

134. One project related to the publication on the UNCITRAL website of information contributed by States on their legislative implementation of the 1958 New York Convention. The Commission reiterated its appreciation to States that had already contributed information and urged all States to continue providing the Secretariat with accurate information to ensure that the data published on the UNCITRAL website remained up to date.

135. The other project related to the preparation of a guide on the 1958 New York Convention. That project was currently being carried out by the Secretariat, in close cooperation with G. Bermann (Columbia University School of Law) and E. Gaillard (Paris XII), who had established research teams to work on the project. The Commission was informed that Mr. Gaillard, with his research team, in conjunction with Mr. Bermann and his research team, and with the support of the Secretariat, had established a website (www.newyorkconvention1958.org) in order to make the

[42] *Official Records of the General Assembly, Fiftieth Session, Supplement No. 17* (A/50/17), paras. 401-404; and ibid., *Sixty-third Session, Supplement No. 17* and corrigendum (A/63/17 and Corr.1), paras. 355 and 356.

[43] Ibid., *Sixty-sixth Session, Supplement No. 17* (A/66/17), paras. 250-252.

information gathered in preparation of the guide on the New York Convention publicly available. The Commission was informed that the website was aimed at promoting the uniform and effective application of the Convention by making available details on its judicial interpretation by States parties. The Commission was also informed that the UNCITRAL secretariat planned to maintain close connection between the cases collected in the CLOUT system and the cases available on the website dedicated to the preparation of the guide on the New York Convention.

136. The Commission expressed its appreciation for the establishment of the website and the work done by the Secretariat, as well as by the professors and their research teams, and requested the Secretariat to pursue efforts regarding the preparation of the guide on the 1958 New York Convention.

XIV. Endorsement of texts of other organizations

A. Unidroit Principles of International Commercial Contracts 2010

137. Unidroit requested the Commission to consider possible endorsement of the Unidroit Principles of International Commercial Contracts 2010.[44]

138. The Commission noted that the 2010 edition of the Unidroit Principles was its third edition; the Unidroit Principles were initially published in 1994 and then again in 2004. It was recalled that the Commission had endorsed the Unidroit Principles 2004 at its fortieth session, in 2007.[45]

139. It was further noted that the main objective of the Unidroit Principles 2010 was to address additional topics of interest to the international business and legal communities and that, as such, they included 26 new articles dealing with restitution in case of failed contracts, illegality, conditions, and plurality of obligors and obligees. Overall, general support was expressed for recognizing that the Unidroit Principles 2010 set forth a comprehensive set of rules for international commercial contracts, complementing a number of international trade law instruments, including the United Nations Sales Convention.

140. Taking note of the amendments made in the Unidroit Principles 2010 and their usefulness in facilitating international trade, the Commission, at its 955th meeting, on 3 July 2012, adopted the following decision:

> "*The United Nations Commission on International Trade Law*,
>
> "*Expressing its appreciation* to the International Institute for the Unification of Private Law (Unidroit) for transmitting to it the text of the 2010 edition of the Unidroit Principles of International Commercial Contracts,
>
> "*Taking note* that the Unidroit Principles 2010 complement a number of international trade law instruments, including the United Nations Convention on Contracts for the International Sale of Goods,[46]

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[44] Available from www.unidroit.org.

[45] *Official Records of the General Assembly, Sixty-second Session, Supplement No. 17* (A/62/17), part I, paras. 209-213.

[46] United Nations, *Treaty Series*, vol. 1489, No. 25567.

"*Noting* that the preamble of the Unidroit Principles 2010 states that:

'These Principles set forth general rules for international commercial contracts,

'They shall be applied when the parties have agreed that their contract be governed by them,

'They may be applied when parties have agreed that their contract be governed by general principles of law, the *lex mercatoria* or the like,

'They may be applied when the parties have not chosen any law to govern their contract,

'They may be used to interpret or supplement international uniform law instruments,

'They may be used to interpret or supplement domestic law,

'They may serve as a model for national and international legislators,'

"*Congratulating* Unidroit on having made a further contribution to the facilitation of international trade by preparing general rules for international commercial contracts,

"*Commends* the use of the 2010 edition of the Unidroit Principles of International Commercial Contracts, as appropriate, for their intended purposes."

B. Incoterms 2010

141. ICC requested the Commission to consider possible endorsement of Incoterms 2010, which had entered into force on 1 January 2011.

142. It was noted that the Incoterms rules, the ICC rules on the use of domestic and international trade terms, generally facilitated the conduct of global trade by providing trade terms that clearly defined the respective obligations of parties and reduced the risk of legal complications. Created by ICC in 1936, Incoterms had been regularly updated to keep pace with the development of international trade, with Incoterms 2010 being the most recent update. It was recalled that the Commission had endorsed Incoterms 1990 at its twenty-fifth session, in 1992,[47] and Incoterms 2000 at its thirty-third session, in 2000.[48]

143. The Commission was informed that Incoterms 2010 updated and consolidated the "delivered" rules, reducing the total number of rules from 13 to 11. It was further suggested that Incoterms 2010 offered a simpler and clearer presentation of all the rules, taking account of the continued spread of customs-free zones, the increased use of electronic communications in business transactions, heightened concerns about security in the movement of goods and changes in transport practices.

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[47] *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 17* (A/47/17), para. 161.

[48] Ibid., *Fifty-fifth Session, Supplement No. 17* (A/55/17), para. 434.

144. Taking note of the usefulness of Incoterms 2010 in facilitating international trade, the Commission, at its 955th meeting, on 3 July 2012, adopted the following decision:

"*The United Nations Commission on International Trade Law*,

"*Expressing its appreciation* to the International Chamber of Commerce for transmitting to it the revised text of Incoterms 2010, which entered into force on 1 January 2011,

"*Congratulating* the International Chamber of Commerce on having made a further contribution to the facilitation of international trade by making Incoterms 2010 simpler and clearer, reflecting recent developments in international trade,

"*Noting* that Incoterms 2010 constitute a valuable contribution to facilitating the conduct of global trade,

"*Commends* the use of the Incoterms 2010, as appropriate, in international sales transactions."

XV. Technical assistance: law reform

145. The Commission had before it a note by the Secretariat (A/CN.9/753) describing the technical cooperation and assistance activities undertaken subsequent to the date of the note on that topic submitted to the Commission at its forty-fourth session, in 2011 (A/CN.9/724).[49] The Commission stressed the importance of such technical cooperation and assistance and expressed its appreciation for the activities undertaken by the Secretariat referred to in document A/CN.9/753.

146. The Commission noted that the continuing ability to respond to requests from States and regional organizations for technical cooperation and assistance activities was dependent upon the availability of funds to meet associated costs. The Commission further noted that, despite efforts by the Secretariat to solicit new donations, funds available in the UNCITRAL Trust Fund for Symposia were quite limited. Accordingly, requests for technical cooperation and assistance activities continued to be very carefully considered, and the number of such activities, which of late had mostly been carried out on a cost-share or no-cost basis, was limited. The Commission requested the Secretariat to continue exploring alternative sources of extrabudgetary funding, in particular by more extensively engaging permanent missions, as well as other possible partners in the public and private sectors.

147. The Commission reiterated its appeal to all States, international organizations and other interested entities to consider making contributions to the UNCITRAL Trust Fund for Symposia, if possible in the form of multi-year contributions or as specific-purpose contributions, in order to facilitate planning and enable the Secretariat to meet the increasing number of requests from developing countries and countries with economies in transition for technical cooperation and assistance activities. The Commission expressed its appreciation to Indonesia for contributing to the Trust Fund since the forty-fourth session of the Commission and to

[49] Ibid., *Sixty-sixth Session, Supplement No. 17* (A/66/17), para. 253.

organizations that had contributed to the programme by providing funds or by hosting seminars.

148. The Commission appealed to the relevant bodies in the United Nations system, organizations, institutions and individuals to make voluntary contributions to the trust fund established to provide travel assistance to developing countries that were members of the Commission. The Commission expressed its appreciation to Austria for contributing to that trust fund since the forty-fourth session of the Commission, thereby enabling travel assistance to be granted to developing countries that were members of UNCITRAL.

XVI. Promotion of ways and means of ensuring a uniform interpretation and application of UNCITRAL legal texts

149. The Commission considered document A/CN.9/748 on the promotion of ways and means of ensuring a uniform interpretation and application of UNCITRAL legal texts, which provided information on the current status of the CLOUT system and on the work undertaken by the Secretariat to finalize the digests of case law relating to the United Nations Sales Convention and the UNCITRAL Model Law on International Commercial Arbitration.[50]

150. The Commission noted with appreciation the continuing work of the Secretariat under the CLOUT system. As at 20 April 2012, 116 issues of compiled case-law abstracts had been prepared, dealing with 1,134 cases. The cases related mostly to the United Nations Sales Convention and the UNCITRAL Model Arbitration Law. Cases relating to the UNCITRAL Model Law on Electronic Commerce,[51] the 1958 New York Convention, the Cross-Border Insolvency Model Law, the Convention on the Limitation Period in the International Sale of Goods,[52] the United Nations Convention on Independent Guarantees and Stand-by Letters of Credit[53] and the United Nations Convention on the Carriage of Goods by Sea, 1978[54] were also published. With reference to the five regional groups of States represented within the Commission, the Commission took note of the fact that, while the majority of the abstracts published referred to Western European and other States, a small decrease in the number of abstracts attributable to that regional group and a parallel modest increase in the number of abstracts from Asian States and Eastern European States had been recorded, compared with the figures indicated in the note (A/CN.9/726) submitted to the Commission at its forty-fourth session.[55]

151. The Commission recalled that the network of national correspondents, composed of 95 appointees, had terminated its mandate in 2012 pursuant to a

[50] Ibid., *Fortieth Session, Supplement No. 17* (A/40/17), annex I; and ibid., *Sixty-first Session, Supplement No. 17* (A/61/17), annex I.

[51] Ibid., *Fifty-first Session, Supplement No. 17* (A/51/17), annex I.

[52] *Official Records of the United Nations Conference on Prescription (Limitation) in the International Sale of Goods, New York, 20 May-14 June 1974* (United Nations publication, Sales No. E.74.V.8), part I.

[53] United Nations, *Treaty Series*, vol. 2169, No. 38030.

[54] Ibid., vol. 1695, No. 29215.

[55] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 17* (A/66/17), paras. 271-272.

decision of the Commission at its forty-second session, in 2009. At that session, the Commission, acknowledging the need for a collection system that would be sustainable over time and could respond to changing circumstances, agreed that States that had appointed national correspondents should be requested to reconfirm that appointment every five years. In order to facilitate implementation of that provision, the Commission further agreed that the term of the previous national correspondents would expire in 2012 and that States would be asked to reconfirm the appointment of their national correspondents at that time and every five years thereafter.[56]

152. At its current session, in order to streamline the procedures for appointment of the new correspondents, the Commission expressed its support for the Secretariat's procedure of having the new appointments be effective as at the first day of its forty-fifth session (i.e. 25 June 2012). The Commission also expressed its support for the Secretariat's proposal that any appointment made afterwards would be effective as from the first day of the forty-fifth session of the Commission and would expire five years from that date. In the light of the increasing volume of case law available on several UNCITRAL texts, the Commission endorsed the Secretariat's appeal to member States to appoint more than one national correspondent and entrust each of them with responsibility for a specific UNCITRAL text. Finally, the Commission expressed its appreciation to the national correspondents who had completed their mandate and welcomed those newly appointed, or reappointed, wishing them a fruitful collaboration with the Secretariat.

153. The Commission noted with appreciation that the third revision of the *UNCITRAL Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods: 2012 Edition* had been issued and was available in English on the UNCITRAL website[57] and that the Secretariat would proceed with its translation into the other five official languages of the United Nations. The Commission was informed that the Secretariat would focus on effectively promoting the Digest and bringing it to the attention of a large segment of the legal and judicial community.

154. The Commission was also informed that the *UNCITRAL 2012 Digest of Case Law on the Model Law on International Commercial Arbitration* had been published in June 2012 in English and made available on the UNCITRAL website.[58] Pursuant to the mandate given by the Commission,[59] the *Digest* identified trends in the interpretation of the UNCITRAL Model Arbitration Law and was designed to enable judges, arbitrators, lawyers, parties to commercial transactions, academics and students to better understand, interpret and apply the UNCITRAL Model Arbitration Law. It was noted that the current version of the Digest was based on 725 cases from 37 States.

155. The Commission was further informed that a one-day launch event for the *UNCITRAL 2012 Digest of Case Law on the Model Law on International Commercial Arbitration*, organized by the Ministry of Law of Singapore in

[56] Ibid., *Sixty-fourth Session, Supplement No. 17* (A/64/17), para. 370.

[57] Available from www.uncitral.org/uncitral/en/case_law/digests.html.

[58] Available from www.uncitral.org/uncitral/en/case_law/digests.html.

[59] *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 17* (A/59/17), paras. 87-91.

cooperation with the UNCITRAL secretariat, had been held in Singapore on 9 June 2012. The main contributors to the Digest from different geographical regions discussed the Digest and the UNCITRAL Model Arbitration Law, in particular the scope of application, the international interpretation pursuant to article 2 A, review of jurisdiction and articles 34-36 of the UNCITRAL Model Arbitration Law. During their interventions, participants underlined the importance of disseminating information on the interpretation and application of the UNCITRAL Model Arbitration Law and the particular usefulness of the Digest in that regard. The Commission expressed its appreciation to the contributors to the Digest and to the Secretariat for their work.

156. The Commission considered the desirability of commencing the preparation of a digest of case law on the Model Law on Cross-Border Insolvency, an issue that had been raised at the forty-first session of Working Group V (Insolvency Law) (A/CN.9/742, para. 38). It was noted that such a digest would provide wider and more ready access to the case law referred to in UNCITRAL texts relating to insolvency and draw attention to emerging trends in the interpretation of the Model Law on Cross-Border Insolvency. The Commission agreed that such a digest should be prepared, subject to the availability of resources in the Secretariat and encouraged the Secretariat to explore the possibility of collaborating with national correspondents and other experts to facilitate the preparation of the necessary analysis and case information.

157. The Commission expressed its continuing belief that the CLOUT system and the digests were an important aspect of the work undertaken by UNCITRAL for promoting awareness, harmonization and uniform interpretation of the law relating to UNCITRAL texts. The Commission recognized the resource-intensive nature of the CLOUT system and the need for further resources to sustain it. The Commission recalled that at its forty-second session, in 2009, it had appealed to all States to assist the Secretariat in the search for available funding at the national level to ensure coordination and expansion of the CLOUT system.[60] Since that appeal, there had been no increase in the resources available for the maintenance and improvement of the system. The Commission thus noted with interest that the Secretariat had refined a project proposal aimed at finding resources for the system and that such a proposal had already been discussed with one UNCITRAL member State. The Commission also noted that the Secretariat was seeking assistance from other States and donors, either in-kind (e.g. non-reimbursable loans of personnel) or through budget contributions, which could also include the pooling of resources from various sources. The Commission thanked the Secretariat for its work and fully endorsed a call for increased resources to maintain and enlarge the work of the Secretariat in that area.

158. The Commission encouraged the Secretariat to explore the possibility of cooperation with the Global Legal Information Network (see www.glin.gov), with a view to enhancing awareness, and uniform interpretation and application, of UNCITRAL texts.

[60] Ibid., *Sixty-fourth session, Supplement No. 17* (A/64/17), para. 372.

XVII. Status and promotion of UNCITRAL texts

159. The Commission considered the status of the conventions and model laws emanating from its work and the status of the 1958 New York Convention, on the basis of a note by the Secretariat (A/CN.9/751) and information obtained by the Secretariat subsequent to the submission of that note. The Commission noted with appreciation the information on the following treaty actions and legislative enactments received since its forty-fourth session, in 2011, regarding the following instruments:

(a) Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958:[61] accession by Liechtenstein (146 States parties);

(b) Convention on the Limitation Period in the International Sale of Goods:[62] accession by Benin (29 States parties);

(c) United Nations Convention on Contracts for the International Sale of Goods:[63] accessions by Benin and San Marino and withdrawal of declarations by Denmark, Finland and Sweden (78 States parties);

(d) United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea:[64] signature by Sweden (one State party);

(e) UNCITRAL Model Law on International Commercial Arbitration (1985), as amended in 2006:[65] legislation based on the Model Law as amended in 2006 had been adopted in Australia, in New South Wales (2010), the Northern Territory (2011), South Australia (2011), Tasmania (2011) and Victoria (2011);

(f) UNCITRAL Model Law on Electronic Commerce (1996):[66] legislation based on the Model Law had been adopted in Australia (2011), in the Australian Capital Territory (2012), New South Wales (2010), Northern Territory (2011), South Australia (2011), Tasmania (2010), Victoria (2011) and Western Australia (2011); Belize (2003); Canada, in the Northwest Territories (2011); Barbados (2001); Saint Lucia (2011); and Saint Vincent and the Grenadines (2007); legislation influenced by the principles on which the Model Law was based had been adopted in China, in Macao, China (2005);

(g) UNCITRAL Model Law on Electronic Signatures (2001):[67] legislation based on the Model Law had been adopted in Barbados (2001), Saint Lucia (2011), Saint Vincent and the Grenadines (2007), Saudi Arabia (2007) and Trinidad and Tobago (2011);

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[61] United Nations, *Treaty Series*, vol. 330, No. 4739.

[62] Ibid., vol. 1511, No. 26119.

[63] Ibid., vol. 1489, No. 25567.

[64] General Assembly resolution 63/122, annex. The Convention has not yet entered into force; it requires 20 States parties for entry into force.

[65] *Official Records of the General Assembly, Fortieth Session, Supplement No. 17* (A/40/17), annex I; and ibid., *Sixty-first Session, Supplement No. 17* (A/61/17), annex I.

[66] Ibid., *Fifty-first Session, Supplement No. 17* (A/51/17), annex I.

[67] Ibid., *Fifty-sixth Session, Supplement No. 17* and corrigendum (A/56/17 and Corr.3), annex II.

(h) UNCITRAL Model Law on International Commercial Conciliation (2002):[68] legislation based on the Model Law had been adopted in the former Yugoslav Republic of Macedonia (2009).

160. The Commission noted, in line with the letter from the Secretary-General to Heads of States and Government dated 9 May 2012,[69] the importance of universal participation and implementation of treaties. The Commission joined the Secretary-General's appeal by calling on States to deposit instruments of ratification or accession to trade law treaties, in particular to those treaties nearing universal participation, namely the 1958 New York Convention (146 States parties), and those nearing entry into force, namely the United Nations Convention on the Use of Electronic Communications in International Contracts[70] (which required one additional action for entry into force) and the United Nations Convention on the Assignment of Receivables in International Trade[71] (which required four additional actions for entry into force).

161. The Commission took note of the bibliography of recent writings related to the work of UNCITRAL (A/CN.9/750) and noted with appreciation the influence of UNCITRAL legislative guides, practice guides and contractual texts.

XVIII. Coordination and cooperation

162. The Commission had before it a note by the Secretariat (A/CN.9/749) providing information on the activities of international organizations active in the field of international trade law in which the UNCITRAL secretariat had participated since the last note to the Commission (A/CN.9/725).[72] The note had been prepared in response to General Assembly resolution 34/142 and in accordance with the mandate of UNCITRAL. In that resolution, the Assembly requested the Secretary-General to place before the Commission, at each of its sessions, a report on the legal activities of international organizations in the field of international trade law, together with recommendations as to the steps to be taken by the Commission to fulfil its mandate of coordinating the activities of other organizations in that field.

163. The Commission noted with appreciation the engagement of its secretariat in activities with a number of organizations both within and outside the United Nations system, including ESCAP, the European Union, the Hague Conference on Private International Law, the Organization for Economic Cooperation and Development, ECE, Unidroit, the United Nations Conference on Trade and Development, the United Nations Inter-Agency Cluster on Trade and Productive Capacity of the United Nations System Chief Executives Board for Coordination, and the World Bank.

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[68] Ibid., *Fifty-seventh Session, Supplement No. 17* (A/57/17), annex I.

[69] Available from http://treaties.un.org/Pages/TreatyEvents.aspx?pathtreaty=Treaty/Focus/Page1_en.xml.

[70] General Assembly resolution 60/21, annex.

[71] General Assembly resolution 56/81, annex.

[72] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 17* (A/66/17), para. 277.

164. The Commission noted that the coordination activity of its secretariat concerned all of the current working groups of UNCITRAL and that the secretariat participated in expert groups, working groups and plenary meetings of other bodies with the purpose of sharing information and expertise, as well as avoiding duplication of work in the relevant fields. The Commission noted that such activity often involved travel to meetings of those organizations and the expenditure of funds allocated for official travel. The Commission reiterated the importance of the coordination work being undertaken by UNCITRAL as the core legal body in the United Nations system in the field of international trade law and expressed support for the use of travel funds for that purpose.

A. Coordination and cooperation in the field of security interests

165. The Commission recalled that, at its forty-fourth session, in 2011, it had approved a paper jointly prepared by the Permanent Bureau of the Hague Conference and the secretariats of UNCITRAL and Unidroit entitled "Comparison and analysis of major features of international instruments relating to secured transactions" (A/CN.9/720) and requested that it be given the widest possible dissemination.[73]

166. The Commission noted that the paper had been published as a United Nations publication entitled "UNCITRAL, Hague Conference and Unidroit texts on security interests",[74] with proper recognition of the contribution of the Permanent Bureau of the Hague Conference and the secretariat of Unidroit. The Commission welcomed that publication and expressed its appreciation to the Secretariat, as well as to the Permanent Bureau of the Hague Conference and the secretariat of Unidroit. It was widely felt that the excellent coordination and cooperation among the three organizations in the field of security interests and the resulting publication was a good example of the kind of coordination and cooperation that the Commission had been supporting for years. It was generally believed that that publication could pave the way for possible future collaboration among the three organizations, with a view to explaining the interrelationship of their texts and thus facilitating the adoption of those texts by States.

167. In addition, the Commission recalled that, at its forty-fourth session, in 2011, it had requested the Secretariat to proceed with the preparation of a joint set of principles on effective secured transactions regimes in cooperation with the World Bank and outside experts.[75] The Commission noted with appreciation that the Secretariat had prepared a first draft summarizing the basic principles and recommendations of the Secured Transactions Guide and was in the process of discussing it with the World Bank.

168. Moreover, the Commission recalled that, at its forty-fourth session, in 2011, it had also requested the Secretariat to cooperate closely with the European Commission with a view to ensuring a coordinated approach to the law applicable to

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[73] Ibid., paras. 280-283.

[74] Available from www.uncitral.org/uncitral/en/uncitral_texts/payments/2011UNCITRAL_HCCH_Unidroit_texts.html.

[75] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 17* (A/66/17), para. 228.

the third-party effects of assignments of receivables, taking into account the approach followed in the United Nations Convention on the Assignment of Receivables in International Trade and the Secured Transactions Guide.[76] The Commission noted that its request had been communicated by the Secretariat to the European Commission and was advised that: (a) the British Institute of International and Comparative Law had completed a study commissioned by the European Commission on that topic;[77] (b) the European Commission was currently analysing that study and had not yet taken a position on the matter; (c) the European Commission report on proprietary aspects of the assignments of claims would be completed in 2013; and (d) the European Commission welcomed the possibility of establishing a coordinated approach with UNCITRAL. The Commission expressed its appreciation to the Secretariat for its efforts and to the European Commission for its positive response. It was widely felt that a coordinated approach would be in the interest of all involved so as to avoid the application of different laws to the third-party effectiveness and priority of the rights of assignees of receivables, depending on the forum in which the issue arose. After discussion, the Commission requested the Secretariat to continue its coordination effort.

B. Reports of other international organizations

169. The Commission took note of statements made on behalf of the following international organizations.

International Institute for the Unification of Private Law (Unidroit)

170. The Commission heard a statement made on behalf of Unidroit. Unidroit welcomed the current coordination and cooperation with UNCITRAL and reaffirmed its commitment to cooperating closely with the Commission with a view to ensuring consistency, avoiding overlap and duplication in the work of the two organizations and making the best use of the resources made available by the respective member States.

171. Unidroit reported that:

(a) Following the adoption of the Unidroit Principles 2010, the Unidroit Governing Council, at its ninety-first session, held in Rome from 7 to 9 May 2012, had given its secretariat a mandate to develop model clauses to assist parties in incorporating the Unidroit Principles 2010 (see para. 137 above) into the terms of their contract, or in choosing them as the rules of law governing their contract;

(b) The Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Space Assets[78] had been adopted at the diplomatic Conference for the adoption of the draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets, held in Berlin from 27 February to 9 March 2012. Among other important

[76] Ibid., paras. 229-231.

[77] The final report is available from http://ec.europa.eu/justice/civil/files/report_assignment_en.pdf.

[78] The Convention and its Protocols are available from www.unidroit.org/english/conventions/mobile-equipment/main.htm.

resolutions, the diplomatic Conference had invited the governing bodies of the International Telecommunications Union (ITU) to consider the matter of ITU becoming the supervisory authority of the international registry to be set up under the Protocol;

(c) It was noted that the negotiations on the establishment of the registry under the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock were well advanced and should be concluded shortly. The Unidroit Governing Council had given its secretariat a mandate to examine the potential economic benefit of developing a fourth protocol to the Convention on International Interests in Mobile Equipment on matters specific to agricultural, mining and construction equipment;

(d) The Unidroit Governing Council had authorized the convening of a committee of governmental experts to consider and finalize the draft principles on the enforceability of close-out netting provisions that had been developed by a Unidroit study group in 2010 and 2011.[79] The Committee was to hold its first session in Rome from 1 to 5 October 2012;

(e) Following the publication of the Official Commentary to the 2009 Unidroit Convention on Substantive Rules for Intermediated Securities, the Committee on Emerging Markets Issues, Follow-Up and Implementation had met in Rio de Janeiro, Brazil, in March 2012. The Unidroit Governing Council welcomed the Committee's proposal to develop a legislative guide to advise States wishing to ratify the Convention,[80] stressing that the guide should set out the options available for regulating those areas of the law which, although related to the Convention, were not directly or wholly addressed by that instrument;

(f) The committee to follow up the application of the 1995 Convention on Stolen or Illegally Exported Cultural Objects[81] had met in Paris on 19 June 2012. The United Nations Educational, Scientific and Cultural Organization-Unidroit Model Provisions on State Ownership of Undiscovered Cultural Objects,[82] completed in 2011, would soon be published;

(g) In the light of the discussion at a colloquium on the private law aspects of promoting investment in agricultural production, organized by Unidroit in Rome from 8 to 10 November 2011,[83] and consultations between Unidroit and the Rome-based United Nations agencies specializing in agriculture, food aid and rural development, the Unidroit Governing Council had authorized its secretariat to establish a study group for the preparation of an international guidance document for contract farming arrangements and to invite the Food and Agriculture Organization of the United Nations, the International Fund for Agricultural Development and other interested international organizations to participate in its work. The Unidroit Governing Council had also authorized its secretariat to pursue

[79] Available from www.unidroit.org/english/studies/study78c/main.htm.

[80] Available from www.unidroit.org/english/conventions/2009intermediatedsecurities/main.htm.

[81] United Nations, *Treaty Series*, vol. 2421, No. 43718.

[82] Available from www.unidroit.org/english/documents/2012/study70a/s-70a-main-e.pdf

[83] Information about, and materials from, the colloquium are available from www.unidroit.org/english/studies/study80/main.htm.

its consultations with a view to the possible preparation of an international guidance document on land investment contracts.

World Bank

172. The Commission heard a statement made on behalf of the World Bank, in which appreciation was expressed to UNCITRAL and its secretariat for the continuing cooperation with the World Bank. It was noted that over the previous years the work of the World Bank in supporting the modernization of the legal enabling environment for economic growth and trade had been significantly enhanced by the work of UNCITRAL and its working groups. In particular, the work being done by the two organizations in establishing uniform legal frameworks in the field of public procurement, arbitration and conciliation, insolvency and secured transactions was highlighted.

173. The World Bank invited UNCITRAL to participate in the Global Forum on Law, Justice and Development (www.globalforumljd.org), a project of the World Bank which aimed at providing an innovative and dynamic forum for knowledge-sharing so as to promote a better understanding of the role of law and justice. In response, the Commission had given the Secretariat a mandate to participate in the Global Forum project.

C. International governmental and non-governmental organizations invited to sessions of UNCITRAL and its working groups

174. At its current session, the Commission recalled that, at its forty-third session, in 2010, it had adopted the summary of conclusions on UNCITRAL rules of procedure and methods of work.[84] In paragraph 9 of the summary, the Commission had decided to draw up and update as necessary a list of international organizations and of non-governmental organizations with which UNCITRAL had a long-standing cooperation and which had been invited to sessions of the Commission.

175. The Commission also recalled that, at its forty-fourth session, in 2011, it had requested the Secretariat to make adjustments to the online presentation of information concerning intergovernmental and non-governmental organizations invited to sessions of UNCITRAL and its working groups and to the modality of communicating such information to States.[85]

176. The Commission heard an oral report by the Secretariat on the implementation of that request by the Commission. It was noted that the Secretariat maintained an online list of intergovernmental and non-governmental organizations that was organized so that States could identify organizations that were being invited to each active working group of UNCITRAL and organizations that had been invited to past working groups of UNCITRAL. It was noted that all organizations on that list were invited to annual sessions of the Commission.

[84] *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17* (A/65/17), annex III.

[85] Ibid., *Sixty-sixth Session, Supplement No. 17* (A/66/17), paras. 288-298.

177. The Commission also noted that the Secretariat constantly updated the list to provide up-to-date information. In that context, the Commission noted that since its forty-fourth session, in 2011, the following organizations had been added to the list of non-governmental organizations invited to sessions of UNCITRAL and its working groups: Business Recovery and Insolvency Practitioners Association of Nigeria; European Intermodal Association; European Multi-channel and Online Trade Association; Miami International Arbitration Society; Pakistan Business Council; and International Union of Judicial Officers.

178. As regards the modality of communicating the relevant information to States, the Commission noted that the links to the web pages where the most updated list could be found continued to be included in invitations to sessions of the Commission and its working groups. The Commission expressed its appreciation to the Secretariat for implementing its request in an efficient manner.

D. Enhancing cooperation with academia

179. The Commission recalled that at its forty-fourth session, in 2011, the Commission decided that the Secretariat should investigate the possibility of inviting a small number of prominent specialized law reviews to attend sessions of the Commission or its working groups as observers, on the understanding that those reviews would then disseminate information about new projects and existing standards, with a view to increasing awareness of the standard-setting and technical assistance work of the Commission.[86]

180. The Secretariat brought to the attention of the Commission the fact that since its forty-fourth session, in 2011, the Secretariat had received requests from various institutions to participate as observers at sessions of UNCITRAL. The Secretariat had had to turn down a number of requests when the eligibility criteria had not been met, in particular when the institution was not international in focus and in membership, when there were doubts regarding the ability of the institution to bring an original and meaningful contribution to the deliberations at the session or when legal or commercial experience to be reported upon by the institution was already sufficiently represented in the session. The Commission encouraged the Secretariat to strictly apply the eligibility criteria to academic institutions.

181. The Commission recalled that, in the founding resolution of UNCITRAL, the General Assembly had authorized the Commission to consult with or request the services of any international or national organization, scientific institution and individual expert, on any subject entrusted to it, if it considered such consultation or services might assist it in the performance of its functions.[87] The Commission therefore considered it appropriate for the Secretariat to invite representatives of academia in their personal capacity to address the Commission or its working group from time to time when such an arrangement would assist in the performance of its functions. The Commission reaffirmed its belief about the importance of furthering

[86] Ibid., para. 298. At that session, the Commission also expressed its support for exploring means to more broadly disseminate UNCITRAL instruments (ibid., para. 319).

[87] General Assembly resolution 2205 (XXI), para. 11.

cooperation with academia and stimulating research related to the work of UNCITRAL.

XIX. UNCITRAL regional presence

A. Establishment of the UNCITRAL Regional Centre for Asia and the Pacific: progress report

182. The Commission recalled that at its forty-fourth session, in 2011, broad support had been expressed for the establishment of UNCITRAL regional centres, which was considered a novel yet important step for UNCITRAL in reaching out and providing technical assistance to developing countries.[88] In particular, at that session, the Commission had approved the establishment of the UNCITRAL Regional Centre for Asia and the Pacific in Incheon, Republic of Korea.[89] The General Assembly, in its resolution 66/94, had welcomed that decision and expressed its appreciation to the Government of the Republic of Korea for its generous contribution to that pilot project.

183. The Regional Centre was officially opened on 10 January 2012 by the Under-Secretary-General for Legal Affairs and Legal Counsel of the United Nations, who emphasized the importance of the principle of the rule of law and the role of the Regional Centre in promoting international trade and development in the Asia-Pacific region. The launch event of the Regional Centre was followed by a regional workshop in which panellists discussed the role of the Regional Centre and the significance of UNCITRAL texts for the region.[90]

184. The Commission heard an oral report by the head of the Regional Centre on the progress made since the establishment of the Regional Centre. It was informed that the Regional Centre was currently fully staffed with a head and a team assistant, funded by the project budget contributed by the Government of the Republic of Korea, and a legal expert provided by the Government of the Republic of Korea on a non-reimbursable basis. It was noted that the activities of the Regional Centre had focused on assessing needs and mapping existing projects relating to trade law reform, with a view to increasing coordination among them. It was emphasized that particular importance was given to coordination with other regional entities, especially ESCAP. The establishment of effective contacts with States that already had the resources and the capacity for trade law reform was also a priority.

185. States were invited to consider contributing to the activities of the Regional Centre by providing financial or human resources, in-kind contributions or as otherwise appropriate. It was added that not only States already involved in trade law reform in the region as donors or partners, but also States that considered increased commercial interaction with the region strategic, and therefore valued

[88] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 17* (A/66/17), para. 264.

[89] Ibid., paras. 267 and 269.

[90] More information about the Regional Centre and the launch event is available from www.uncitral.org/uncitral/en/tac/rcap.html.

increased legal predictability for those commercial exchanges, could potentially be interested in closer cooperation with the Regional Centre.

186. It was also added that, from an operational standpoint, the Regional Centre had identified East Asia and the Pacific as areas of priority for its work, in the light of requests as well as existing initiatives, and that currently its main areas of work included alternative dispute resolution, sale of goods and electronic commerce.

B. Regional presence in other parts of the world

187. The Commission took note of statements by member States expressing an interest in establishing UNCITRAL regional centres.

188. In particular, the representative of Singapore stated that, further to its previous expression of interest in hosting an UNCITRAL centre, the Government of Singapore had been communicating with the Secretariat on that issue and that objectives and a basic structure for the establishment of such a centre had been tentatively identified. Hence, the Government proposed that an UNCITRAL centre should be established in Singapore, operating under the supervision of the Secretary of UNCITRAL and collaborating, as appropriate, with the UNCITRAL Regional Centre for Asia and the Pacific.

189. It was also stated that the activities proposed for the UNCITRAL centre in Singapore could include: training on UNCITRAL and other relevant international trade law texts, thus contributing to increasing the understanding of international trade law; promotion of the adoption of UNCITRAL texts, especially in the context of regional cooperation; and the organization of substantive meetings in support of the work of UNCITRAL on the preparation of legislative standards. It was indicated that the centre would report on its activities at the annual session of the Commission.

190. It was also indicated that the Government of Singapore offered support, including an initial level of funding, to the proposed centre, and that the Government would make every effort to further mobilize existing resources to support the activities of that centre.

191. The representative of Singapore expressed confidence that the proposed centre, together with other regional, subregional or country centres of UNCITRAL that had already been or were going to be established, would provide an important contribution to the efforts of UNCITRAL and to global peace and development.

192. The representative of Kenya confirmed the interest of the Government of Kenya in hosting an UNCITRAL regional centre in Nairobi, and stressed that the proposed location was very suitable because of the existing international presence and excellent facilities. Several other delegates emphasized the importance of establishing an UNCITRAL presence in Africa.

193. The Commission welcomed the offers from the Governments of Kenya and Singapore, requested the Secretariat to further pursue administrative arrangements for the establishment of those centres and noted the importance of maintaining close coordination and cooperation between regional centres.

194. The Secretariat was requested to keep the Commission informed of developments regarding the operation of the Regional Centre for Asia and the Pacific and the establishment of other UNCITRAL regional centres, in particular their funding and budget situations.

XX. Role of UNCITRAL in promoting the rule of law at the national and international levels

195. The Commission recalled that an item on the role of UNCITRAL in promoting the rule of law at the national and international levels had been on its agenda since 2008, in response to the invitation of the General Assembly to the Commission to comment, in its report to the Assembly, on its current role in promoting the rule of law.[91] The Commission recalled that it had transmitted its comments, as requested, in its annual reports to the Assembly,[92] expressing in particular its conviction that the promotion of the rule of law in commercial relations should be an integral part of the broader agenda of the United Nations to promote the rule of law at the national and international levels, including through the Rule of Law Coordination and Resource Group supported by the Rule of Law Unit in the Executive Office of the Secretary-General. The Commission noted with satisfaction that that view had repeatedly been endorsed by the Assembly.[93]

196. The Commission took note of General Assembly resolution 66/102 on the rule of law at the national and international levels. The Commission in particular noted that, in paragraph 12 of that resolution, the Assembly had invited the Commission (and the International Court of Justice and the International Law Commission) to continue to comment, in its reports to the Assembly, on its current role in promoting the rule of law. The Commission also took note of paragraphs 15-18 of that resolution, concerning the high-level meeting of the General Assembly on the topic of the rule of law to be held on 24 September 2012, and paragraph 20, by which the Assembly had invited Member States and the Secretary-General to suggest possible subtopics for future Sixth Committee debates.

197. The Commission recalled that at its forty-third session, in 2010, it had indicated that it considered it essential to keep a regular dialogue with the Rule of Law Coordination and Resource Group through the Rule of Law Unit and to keep abreast of progress made in the integration of the work of UNCITRAL into the United Nations joint rule of law activities. To that end, it had requested the Secretariat to organize briefings by the Rule of Law Unit every two years, when sessions of the Commission were held in New York.[94]

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[91] General Assembly resolutions 62/70, para. 3; 63/128, para. 7; 64/116, para. 9; 65/32, para. 10; and 66/102, para. 12.

[92] *Official Records of the General Assembly, Sixty-third Session, Supplement No. 17* and corrigendum (A/63/17 and Corr.1), para. 386; ibid., *Sixty-fourth Session, Supplement No. 17* (A/64/17), paras. 415-419; ibid., *Sixty-fifth Session, Supplement No. 17* (A/65/17), paras. 313-336; and ibid., *Sixty-sixth Session, Supplement No. 17* (A/66/17), paras. 299-321.

[93] Resolutions 63/120, para. 11, 64/111, para. 14, 65/21, paras. 12 to 14, and 66/94, paras. 15-17.

[94] *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17* (A/65/17), paras. 335.

198. Pursuant to that request, the rule of law briefing was held during the session, which was put in the context of the high-level meeting. During the first part of the briefing, UNCITRAL was informed about preparations for the high-level meeting. During the second part of the briefing, representatives of States and organizations suggested points for reflection by UNCITRAL in its comments to the General Assembly this year.

A. Summary of the briefing

199. The opening remarks were delivered on behalf of the Under-Secretary-General for Legal Affairs and Legal Counsel of the United Nations by the Officer-in-Charge of the Office of Legal Affairs and Director of the General Legal Division of the Office of Legal Affairs. She emphasized that, while there was no doubt in the United Nations system about the important role played by UNCITRAL in the promotion of the rule of law, slow progress had been made in the integration of UNCITRAL instruments and tools into the United Nations joint rule of law activities. That was particularly regrettable since the need for UNCITRAL expertise, instruments and tools was manifest in reports from United Nations field operations, which referred to unfilled capacity gaps regarding measures aimed at economic revitalization, employment generation and private sector development. Among practical steps towards bringing the results of the work of UNCITRAL and its vast experience to intended beneficiaries, she identified the need for the sustained involvement of interested countries themselves, expanded outreach activities of UNCITRAL and the active involvement of United Nations and other rule of law assistance providers on the ground.

200. The Commission was subsequently updated by a representative of the Rule of Law Unit about the developments in the United Nations rule of law agenda since the briefing by the Unit to UNCITRAL in 2010. The speaker highlighted growing recognition in various United Nations bodies, including in the Security Council, of the importance of rule of law activities promoting economic development, and noted that ways should be found to reflect that growing recognition in the work of the United Nations. The attention of the Commission was drawn to: (a) the report of the Secretary-General entitled "Delivering justice: programme of action to strengthen the rule of law at the national and international levels" (A/66/749), submitted for the consideration of Member States in preparation of the high-level meeting on rule of law to be held pursuant to General Assembly resolution 66/102; (b) growing concern that current United Nations institutional arrangements in the rule of law area did not succeed in promoting a coordinated and coherent approach in the United Nations rule of law efforts; and (c) the efforts of the Deputy Secretary-General to address that concern. The Commission took note of the point made that gathering data on the impact of UNCITRAL technical assistance would be timely and in line with the calls by the General Assembly and the Security Council for assessment of the effectiveness of United Nations rule of law assistance activities.

201. The Commission was then briefed by the representative of Mexico, a co-facilitator of informal consultations of Member States on an outcome document of the high-level meeting, on the progress made in the consultations. The Commission learned that some provisions under consideration for inclusion in an

outcome document would recognize the contribution made by UNCITRAL to the promotion of the rule of law in international trade.

202. The second part of the briefing was opened by the representative of Austria, who highlighted the economic component of the rule of law, in particular the contribution of UNCITRAL to the promotion of the rule of law in both national and cross-border contexts in particular. Specific reference was made to the UNCITRAL Model Law on Public Procurement as an important tool in the fight against corruption, to UNCITRAL instruments in the area of commercial dispute resolution as relevant to the promotion of access to justice and the culture of the rule of law in society as a whole, and to UNCITRAL insolvency law texts that provided rule-based resolution of financial difficulties, exit mechanisms and the distribution of assets. In conclusion, he noted that efforts to promote the rule of law at the national and international levels did not serve an abstract goal, but were aimed at the protection of the rights and interests of individuals and that UNCITRAL might have a less visible but no less important impact in addressing the roots of economic tensions and problems, such as poverty, inequality or disputes over access to shared resources.

203. Representatives of UNDP, IDLO, ILI and Alfa-Redi (a non-governmental organization invited to participate in the panel in view of its work in promoting the rule of law as a component of the information society) described lessons learned in assisting States with strengthening the rule of law at the national level. A representative of IDLO highlighted the importance of national ownership, the involvement of civil society actors and local commitment to reforms at all levels — from political decision makers and high-level civil servants to implementing staff — for rule of law reforms in any sector to succeed. It was therefore considered essential to work with the national staff and not to impose solutions.

204. That message was echoed in a statement by one speaker, who said that the objective of the United Nations rule of law work was not about imposing foreign legal systems or overly elaborate ones but about applying basic rule of law principles to local conditions and local needs and helping to integrate various specific disciplines under commonly acceptable rule of law standards. Other speakers pointed out that UNCITRAL was doing exactly that by harmonizing legal approaches and business practices embodied in national laws from various legal systems and providing models for reform. Without them, legislatures found it difficult to proceed; with such texts in hand, local officials could dedicate their time more efficiently to local specifics. It was noted that the methods of work of UNCITRAL themselves contributed to harmonization by allowing delegations from various legal systems to interact and exchange ideas; knowledge of other systems helped to promote better understanding of how to interact in international trade.

205. Examples were provided of the use of UNCITRAL texts as models for local reforms in various areas of commercial law. A link between UNCITRAL texts and the rule of law in the broader context was demonstrated by an example provided by the representative of ILI on the use of UNCITRAL texts in the area of security interests, in particular as they regulated non-possessory liens in property. It was argued that, as studies by academics and practitioners had shown, in the absence of such laws individuals desperate to start businesses had resorted to illegal means (e.g. forgery, false documents), resulting in more criminal convictions in some countries than for murder, armed robbery and other major felonies combined. The

link between the work of UNCITRAL and good governance was demonstrated by reference to UNCITRAL texts in the area of public procurement and privately financed infrastructure projects that fostered integrity, confidence, fairness, transparency and accountability in public expenditures. A representative of UNDP provided examples in which its work on the legal empowerment of the poor could benefit from UNCITRAL work, in particular regarding regulation of microfinance, micro-businesses, access to justice and enforcement of contracts.

206. Several speakers referred to the importance of UNCITRAL texts in ensuring a nexus between the State; high-level commitments, embodied in international treaties, declarations or other instruments; and their implementation in the daily life of people. The UNCITRAL Model Law on Public Procurement, for example, was widely considered an indispensable tool in the implementation of the United Nations Convention against Corruption; the UNCITRAL instruments on privately financed infrastructure projects were considered relevant to the implementation of the outcome document of the United Nations Conference on Sustainable Development, entitled "The future we want"[95] (see para. 115 above); and UNCITRAL model laws and rules in the area of commercial arbitration and conciliation were considered important for the effective implementation of the 1958 New York Convention.

207. Other speakers referred to the need to achieve better coordination of rule of law efforts at both the national and international levels and to make them more responsive to the realities of the information society. An example of conflicting rules and efforts at the regional and international levels that negatively affected the interoperability of the e-commerce and e-governance systems of Governments was given by a representative of Alfa-Redi, with the conclusion that no rule of law could exist where there was chaos regarding applicable rules. The role of UNCITRAL as the core legal body in the field of international trade law, with its mandate to coordinate activities of various bodies active in that field and encourage cooperation among them, was highlighted.

208. The Commission heard various suggestions regarding a programme of action that it could recommend to States with a view to strengthening the rule of law in commercial relations, among them: (a) the creation of international tribunals (akin to the International Tribunal for the Law of the Sea) with competence to give advisory opinions on international conventions regulating commercial law issues (for example, the 1958 New York Convention or the United Nations Sales Convention), recognizing that the International Court of Justice did not have jurisdiction over disputes involving private parties; (b) improving the capacity of local judiciary to handle commercial law disputes, including through the establishment of specialized commercial law courts and the provision of targeted training to judges of those courts (which did not need to involve creating a separate commercial court system, but could consist merely of having specialized judges within the regular civil court system); (c) increased research by academic institutions on issues of commercial law and the impact of commercial law reforms on economic development and the rule of law; and (d) creating, strengthening or confirming the existence of commercial law reform units and relevant expertise in ministries of justice, legislatures or legislative reform commissions, as appropriate.

[95] General Assembly resolution 66/288, annex.

209. The Commission also heard the view that in rule of law assistance programmes there was often an excessive focus on institutional reforms and no sufficient consideration of the impact of legislative reforms on institutions and the judiciary. The Commission also heard the view that, while the link between the rule of law and economic development had long been established, the mutually reinforcing impact of the two was still to be considered. It was also considered important to underscore that the rule of law in the economic development context was not only or primarily about attracting foreign investment but also about internal development.

210. During the briefing, speakers expressed the view that the Commission, during its forty-five years of existence, had already contributed and continued contributing significantly to strengthening the rule of law in commercial relations, international trade and in the broader context of the rule of law at both the national and international levels, at the crucial juncture between the two and in public and private law contexts. That contribution should be duly recognized by States and the United Nations system in the context of the high-level meeting and in its outcome document.

B. Action by the Commission

Possible outcomes of the high-level meeting

211. The Commission noted that, in paragraph 16 of resolution 66/102, the General Assembly had decided that the high-level meeting would result in a concise outcome document. The Commission was unanimous that an outcome document should refer to UNCITRAL work and recognize the contribution made by UNCITRAL to the promotion of the rule of law in the economic field, which was vital to the promotion of the rule of law in the broader context.

212. The Commission noted the availability of the Secretariat to assist Member States in formulating actions in support of the objectives of UNCITRAL if States voluntarily decided to undertake such action on the occasion of the high-level meeting or any other occasion. Support was expressed for making known to States, for their consideration, possible actions recommended by the UNCITRAL secretariat in the light of experience accumulated through UNCITRAL technical assistance and cooperation activities. The view was also expressed that recommended actions could in addition be considered by the Commission itself at a future session (see paras. 218-223 below).

Address by the Chair of the forty-fifth session of UNCITRAL to the high-level meeting

213. Concern was expressed that in paragraph 15 (b) of General Assembly resolution 66/102, the Chair of UNCITRAL was not listed among the speakers at the high-level meeting. The Commission was unanimous in emphasizing the importance of the UNCITRAL Chair addressing the high-level meeting. That was considered to be in line with paragraph 12 of resolution 66/102, by which the Assembly had requested the Commission (together with the International Court of Justice and the International Law Commission) to continue to comment on its current role in promoting the rule of law (see para. 196 above). It was also considered to be in line

with the message of the Commission, endorsed by the Assembly, that the promotion of the rule of law in commercial relations should be an integral part of the broader agenda of the United Nations to promote the rule of law at the national and international levels (see para. 195 above). Otherwise, it was noted, the only expert body in the United Nations system in the field of international commercial law would be excluded from what was intended to be inclusive and comprehensive rule of law discussion in the Assembly.

214. The high-level meeting was viewed as a unique opportunity for the international community to look at rule of law issues from a commercial law point of view and to increase the knowledge of all concerned about the impact of commercial law reforms and UNCITRAL on the promotion of the rule of law.

215. The Commission requested the Chair of its forty-fifth session to transmit its views as expressed in the present report to the Office of the President of the General Assembly.

216. The Commission was informed that the Office of Legal Affairs had requested the Office of the President of the General Assembly to invite the UNCITRAL Chair to address the high-level meeting. The Office of Legal Affairs stated that no procedural obstacles existed to the UNCITRAL Chair addressing the high-level meeting; it was thus a matter of the political will of States to agree on that point in consultation with the President of the General Assembly.

217. It was considered essential that Member States themselves, in their statements at the high-level meeting, should not overlook the areas of work of UNCITRAL and its role in the promotion of the rule of law.

UNCITRAL messages to the high-level meeting

218. The Commission agreed that its message to the high-level meeting should consist of a message addressed to States and a message addressed to the United Nations system.

219. As regards the message to States, the Commission in particular noted that local capacity in commercial law reforms should continually be built, recognizing that commercial law constantly evolved in response to business practices. Nevertheless, the experience from UNCITRAL technical assistance and cooperation activities, including those of the recently established UNCITRAL Regional Centre for Asia and the Pacific (see paras. 182-186 above), demonstrated that, amid pressure to address other priorities, local needs in commercial law reforms were systematically overlooked, with the result that resources were allocated to other areas and the local capacity of countries to engage in commercial law reforms was weakened. In many States, policymaking and legislative work related to international legal standards had not kept pace with international developments in finance and commerce. In some States, good laws regulating commerce might exist, but their economic impact was limited when there was no local capacity to properly interpret or apply them. There were often not enough people in Governments with expertise in commercial law reforms with whom the UNCITRAL secretariat would be able to establish sustainable dialogue. To overcome those deficiencies, the sustainable involvement of States in commercial law reforms was needed.

220. Such involvement should translate into concrete steps that individual States could take, such as:

(a) Establishing a national centre of international commercial law expertise with the capacity to identify local needs for commercial law reforms, utilize UNCITRAL standards and technical assistance tools to address such needs, and promote a coordinated approach by that State to the treatment of the same issues in various forums, including in the negotiation of a country-specific development assistance framework;

(b) Putting in place a mechanism for collecting, analysing and monitoring national case law related to UNCITRAL texts relevant to that State and integrating such a mechanism into the existing UNCITRAL systems aimed at addressing the need of the judiciary to better understand the internationally prevailing application and interpretation of UNCITRAL standards and achieve effective cross-border court cooperation. Such measures were aimed at building the local capacity of States necessary to ensure interpretation of UNCITRAL standards in the light of their international character and the need to promote uniformity in their application and the observance of good faith in international trade[96] and thus fulfil the obligations of States under relevant international conventions to which they might be parties.

221. As regards the message to the United Nations system, the Commission in particular reiterated its view that an excessive or exclusive focus on some areas of legal reform while disregarding other areas that were less visible ought to be avoided, that advancing the rule of law should be an inclusive and comprehensive process, that the rule of law and economic development were mutually reinforcing and that institutional reforms should not be undertaken at the expense of legislative reforms.

222. In addition, the Commission reiterated that the promotion of the rule of law in commercial relations should be an integral part of the broader agenda of the United Nations to promote the rule of law at the national and international levels. Noting slow progress in such integration, the Commission considered the need for: (a) designating the UNCITRAL secretariat as a lead agency on commercial law matters in current or future rule of law coordination mechanisms; (b) conducting outreach to country teams with the goal of increasing their awareness about the work of UNCITRAL and its relevance to their work on the rule of law; and (c) reflecting by default needs for commercial law reforms in templates used for the formulation of country-specific development assistance programmes.

223. It was noted that the above messages to States and the United Nations would be mutually reinforcing: local needs in commercial law reforms ought to be made known by local authorities to the international community, while the international community engaged in the formulation and implementation of a country-specific development programme ought to understand the importance of addressing those needs and be aware of the relevant capacity of UNCITRAL. In the long run, it was noted, the recommended steps should contribute to building the local capacity of

[96] See, for example, art. 7 of the United Nations Convention on Contracts for the International Sale of Goods, art. 7 of the Convention on the Limitation Period in the International Sale of Goods and art. 5 of the United Nations Convention on the Use of Electronic Communications in International Contracts.

States to continually engage in commercial law reforms at the country level and in a coordinated fashion in the rule-formulating activities of regional and international bodies.

Possible subtopics for future Sixth Committee debates

224. The attention of the Commission was drawn to paragraph 20 of General Assembly resolution 66/102, which contained an invitation by the Assembly to Member States and the Secretary-General to suggest possible subtopics for future Sixth Committee debates. The Commission noted that its secretariat had been requested to contribute to the preparation of a report of the Secretary-General, as part of the implementation of paragraph 20 of resolution 66/102. The Commission invited its members and observers to suggest UNCITRAL-related subtopics, based on the experience of UNCITRAL in international trade law, for consideration by the Sixth Committee, and took note of subtopics considered by its secretariat for contribution to that report.

225. Based on difficulties encountered by the Commission with the implementation of its mandate to coordinate legal activities in the field of international trade law and its previous decisions in that regard, a subtopic suggested for consideration by the Sixth Committee was "Means of achieving effective coordination of rule-making activities at the regional and international levels".

226. Another suggested subtopic was "Access to justice through alternative means of dispute resolution". The Commission noted in that regard the cost and time-consuming nature of judicial reforms, which might make it advisable to seek alternative ways of delivering justice. It was also noted that that subtopic would inevitably touch upon issues of traditional and informal justice mechanisms, much debated in the United Nations system, but should also touch upon issues of arbitration and conciliation.

227. The third subtopic suggested was "Mutually reinforcing impact of economic development and the rule of law". The Commission noted that in the United Nations system the emphasis had so far been on the role of the rule of law in economic development but not the role of economic development in strengthening and sustaining the rule of law in the long run.

XXI. A strategic direction for UNCITRAL

228. The Commission had before it a note by the Secretariat (A/CN.9/752 and Add.1) responding to a request at the forty-fourth session of the Commission, in 2011, for a note on strategic planning.[97] The note by the Secretariat set out a number of issues for consideration by the Commission in setting the parameters for a strategic plan for UNCITRAL, addressing first the state of play within UNCITRAL and its secretariat and, second, the harmonization mandate given to UNCITRAL by the General Assembly as it might be expressed in terms of a strategic goal and strategic priorities. The note considered the work programme of the Commission, the role of the various bodies of UNCITRAL (the Commission, its

[97] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 17* (A/66/17), para. 343.

working groups and secretariat) in realizing that programme, the methods of work employed, allocation of resources and strategic issues for consideration.

229. The Commission took note of the following matters (see A/CN.9/752/Add.1, para. 26), as strategic considerations:

(a) The subject areas that should be accorded the highest priority, by reference to the role and relevance of UNCITRAL;

(b) Achieving the optimal balance of activities given current resources;

(c) The sustainability of the existing modus operandi, i.e. current emphasis on formal rather than informal negotiations when developing texts, given current resources;

(d) The mobilization of additional resources and the extent to which UNCITRAL should seek external resources for its activities, such as through joint activities and cooperation with other bodies.

230. Some preliminary proposals were advanced with regard to the strategic directions discussed in the note by the Secretariat. One view was that certain options set out therein might serve as the basis for a work programme for UNCITRAL on promoting the rule of law at the national and international levels. It was suggested that such a programme might encompass the following elements:

(a) Promoting an integrated approach, beginning with the development of a project and carrying through to technical assistance and monitoring thereof;

(b) Developing practice guidelines for judges working in cross-border areas of the law, as was done by Working Group V (Insolvency Law) with regard to cross-border insolvency;

(c) Formalizing networking by creating a list of participants ("listserv") that would allow experts to "meet" and exchange information, as well as help States that needed assistance to identify experts in the field. The example was given of a similar mechanism that had been launched by the Hague Conference;

(d) Setting aside time at UNCITRAL meetings for the sharing of information by States on initiatives they were undertaking to promote UNCITRAL instruments; that would, inter alia, make States that might be seeking assistance aware of initiatives that they could access for their benefit;

(e) Further developing the cooperation of UNCITRAL with the World Bank on elaborating the links between economic development and trade law, and the role of the latter in helping States attract foreign trade and investment.

231. The Commission agreed to consider, and provide guidance on, inter alia, those matters at its forty-sixth session. The Secretariat was requested to reserve sufficient time in the draft agenda for that session to allow for a detailed discussion of that important topic.

232. In addition, reference was made to the important work done by UNCITRAL in the field of commercial fraud, in particular a note by the Secretariat entitled "Indicators of commercial fraud" (A/CN.9/624 and Add.1 and 2) that had been

approved by the Commission at its forty-first session, in 2008.[98] It was said that commercial fraud remained a major obstacle to international trade and noted that, given the vital role of the private sector in combating commercial fraud, UNCITRAL was in a unique position to coordinate ongoing efforts in that field and thereby help draw the attention of legislators and policymakers to that important issue. It was proposed that the Secretariat could organize a colloquium on the topic, resources permitting.

XXII. International commercial arbitration moot competitions

A. Willem C. Vis International Commercial Arbitration Moot 2012

233. It was noted that the Association for the Organization and Promotion of the Willem C. Vis International Commercial Arbitration Moot had organized the Nineteenth Moot. The oral arguments phase had taken place in Vienna from 30 March to 5 April 2012. As in previous years, the Moot had been co-sponsored by the Commission. It was noted that the legal issues dealt with by the teams of students participating in the Nineteenth Moot had been based on article 79, paragraph (2), of the United Nations Sales Convention and involved a supply chain. A total of 280 teams from law schools in 69 countries had participated in the Nineteenth Moot. The best team in oral arguments was that of the NALSAR University of Law (India). The oral arguments of the Twentieth Willem C. Vis International Commercial Arbitration Moot would be held in Vienna from 22 to 28 March 2013.

234. It was also noted that the Ninth Willem C. Vis (East) International Commercial Arbitration Moot had been organized by the Vis East Moot Foundation with the Chartered Institute of Arbitrators, East Asia Branch, and also co-sponsored by the Commission. The final phase had been organized in Hong Kong, China, from 19 to 25 March 2012. A total of 91 teams from 26 countries had taken part in the Ninth (East) Moot. The winning team in the oral arguments was from City University of Hong Kong. The Tenth (East) Moot would be held in Hong Kong, China, from 11 to 17 March 2013.

B. Madrid Commercial Arbitration Moot 2012

235. It was noted that Carlos III University of Madrid had organized the Fourth International Commercial Arbitration Competition in Madrid from 28 May to 1 June 2012. The Madrid Moot had also been co-sponsored by the Commission. The legal issues involved in the competition related to an international construction contract in which the United Nations Sales Convention and the UNIDROIT Principles of International Commercial Contracts[99] were involved and international commercial arbitration under the UNCITRAL Model Arbitration Law, the 1958 New

[98] For the consideration of that document by the Commission, see ibid., *Sixty-second Session, Supplement No. 17* (A/62/17), part one, paras. 199-200; ibid, *Sixty-third Session, Supplement No. 17* and corrigendum (A/63/17 and Corr.1), paras. 339-344; and ibid., *Sixty-fourth Session, Supplement No. 17* (A/64/17), paras. 345-348.

[99] Available from www.unidroit.org/english/principles/contracts/main.htm.

York Convention and the 2012 ICC Rules of Arbitration.[100] A total of 17 teams from law schools or masters programmes in seven countries had participated in the Madrid Moot in Spanish. The best team in oral arguments was from Carlos III University of Madrid. The Fifth Madrid Moot would be held from 6 to 10 May 2013.

XXIII. Relevant General Assembly resolutions

236. The Commission took note of the following three General Assembly resolutions adopted on the recommendation of the Sixth Committee: resolution 66/94 on the report of the United Nations Commission on International Trade Law on the work of its forty-fourth session; resolution 66/95 on the United Nations Commission on International Trade Law Model Law on Public Procurement; and resolution 66/96 on the United Nations Commission on International Trade Law Model Law on Cross-Border Insolvency: The Judicial Perspective.

237. The Commission was reminded of the difficulties faced in 2011 in conveying to the Fifth and Sixth Committees of the General Assembly the decision of the Commission taken at its forty-fourth session, in 2011, on the pattern of alternating meetings in Vienna and New York.[101] Regret was expressed that the Assembly, in its resolution 66/94, adopted on the recommendation of the Sixth Committee, had only noted the agreement on that matter in the Commission without formulating strong support for continuing a pattern of meetings that was considered essential, in particular for developing countries.

238. The Commission noted the need to convey on future occasions an appropriately strong message to the General Assembly on issues relating to resources available to the Commission. The need for closer and more continuous coordination of the positions of States in the Fifth and Sixth Committees was emphasized.

XXIV. Other business

A. Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework

239. The Commission took note of the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework,[102] which had been endorsed by the Human Rights Council in its resolution 17/4. In that resolution, the Council had requested the Secretary-General to prepare a report on how the United Nations system as a whole could contribute to the advancement of the business and human rights agenda and the dissemination and implementation of the Guiding Principles, addressing in

[100] Available from www.iccwbo.org/products-and-services/arbitration-and-adr/arbitration/icc-rules-of-arbitration.

[101] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 17* (A/66/17), paras. 334-340.

[102] A/HRC/17/31, annex I.

particular how capacity-building of all relevant actors to that end could best be addressed within the United Nations system.

240. One delegation proposed the inclusion of the topic of business and human rights in the future work programme of the Commission. It was suggested that the Guiding Principles should be discussed at a future session of the Commission. Due to time constraints, the proposal and the suggestion were not discussed by the Commission at its forty-fifth session.

B. Entitlement to summary records

241. The Commission recalled that, at its forty-fourth session, in 2011, it had considered proposals to substitute the production of summary records of UNCITRAL meetings with either unedited transcripts of proceedings or digital recordings of proceedings. At that session, the Commission expressed its willingness to discuss the subject again at its forty-fifth session on the basis of a report to be prepared by the Secretariat setting out the issues and options involved.[103]

242. The Commission heard a report by the Secretariat on the digital recording system available in the United Nations and saw a demonstration of the website where digital recordings of one of the United Nations bodies had been made available. It was also informed that the UNCITRAL secretariat had requested digital recordings for the forty-fifth session of the Commission, in addition to the provision of summary records, to examine their utility as compared to summary records.

243. The Commission recalled differences between summary records and other documents of UNCITRAL. The Commission recalled that UNCITRAL made use of summary records only in the context of its deliberations for the preparation of a normative instrument, including in committees of the whole but excluding meetings of the working groups. It was also recalled that suggestions to relinquish or curtail the use of summary records were not new and had been previously discussed in the Commission, for example at its thirty-seventh session, in 2004.[104] The Commission recalled that at that time it had unanimously stressed the importance of summary records as essential elements of the *travaux préparatoires* that should be available for subsequent reference when interpreting the standards drawn up by the Commission.

244. The Commission reiterated the importance of preserving complete and accurate *travaux préparatoires* of its legal texts in a form and by means that would ensure the record of the content of the information and the usability, availability and accessibility of such information for subsequent reference. The Commission considered the benefits and drawbacks of each currently available means of preserving its records in accordance with those criteria.

245. In particular, it was noted that the preparation of summary records involved high costs for the Organization, while summary records did not always satisfactorily

[103] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 17* (A/66/17), paras. 332-333.

[104] Ibid., *Fifty-ninth Session, Supplement No. 17* (A/59/17), paras. 129-130.

meet the intended goal of preserving all elements of deliberations since they were prepared by précis-writers in English who might lack the necessary legal expertise to act as reliable filters of UNCITRAL deliberations. Further issues could arise at the time of translation of summary records into other official languages of the United Nations. Long delays in the issuance of summary records in all languages was a recurrent problem, which, as the Commission had been informed at its thirty-seventh session, in 2004,[105] was unlikely to be resolved soon under the prevailing circumstances. Improving the delivery of high-quality summary records while preserving their accuracy and reliability required additional work and resources on the part of the Secretariat.

246. The Commission reaffirmed the position taken at its thirty-seventh session, in 2004, as regards unedited verbatim transcripts, in particular that they would be of little use in view of the lack of a translation into the other official languages.[106] Difficulties with their use in the past, in particular with respect to the comprehensiveness of the text, were also noted.

247. As regards digital recordings, while noting the many benefits they would bring (they would be promptly available and authentic, obviate the need for précis-writers and translators and thus be inexpensive), the Commission noted that they would be less useful than good-quality summary records in view of the lack of proper indexing, which would make the performance of the search function on such recordings a time-consuming process. The need for the long-term retention and usability of non-paper-based records of information in the light of evolving technologies was also noted.

248. Support was expressed for digital recordings that provided full authentic records of discussions, which currently no other documents might provide, including reports and summary records. It was noted, however, that, for the system of digital recordings to be useful, the Secretariat should establish a mechanism for proper archiving and searching. It was also noted that a chronological way of presenting digital recordings would be insufficient, since the most relevant information would not be so easy to find in a potentially long series of relevant statements.

249. After discussion, the Commission confirmed that good-quality summary records remained the best available option for preserving complete and accurate *travaux préparatoires* in the most user-friendly and reliable way. At the same time, it noted the need to consider modern solutions that might address existing problems with the issuance of summary records and add useful features in the use of UNCITRAL records. The Commission therefore decided, while not relinquishing its entitlement to summary records under General Assembly resolution 49/221, to request that digital recordings continue to be provided at its forty-sixth and forty-seventh sessions, in 2013 and 2014, on a trial basis, in addition to summary records, as was done for the forty-fifth session. The Commission agreed that at its forty-seventh session, in 2014, it would assess the experience of using digital recordings and, on the basis of that assessment, take a decision regarding the possible replacement of summary records by digital recording. The Commission

[105] Ibid., para. 129.
[106] Ibid., para. 130.

requested the Secretariat to report to the Commission on a regular basis on measures taken in the United Nations system to address possible problems with the use of digital recordings. It also requested the Secretariat to assess the possibility of providing digital recordings at sessions of UNCITRAL working groups, at their request, and to report to the Commission at its forty-seventh session, in 2014.

C. Strategic framework for the biennium 2014-2015

250. The Commission had before it the proposed strategic framework for the period 2014-2015 (A/67/6 (Prog. 6)) and was invited to review the proposed biennial programme plan for subprogramme 5 (Progressive harmonization, modernization and unification of the law of international trade) of programme 6 (Legal affairs). The Commission noted that the proposed framework had been reviewed by the Committee for Programme and Coordination at its fifty-second session, held from 4 to 29 June 2012, and would be transmitted to the General Assembly at its sixty-seventh session.

251. Concerns were expressed that the resources allotted to the Secretariat under subprogramme 5 were insufficient for it to meet the increased and pressing demands from developing countries and countries with economies in transition for technical assistance with law reform in the field of commercial law. The Commission urged the Secretary-General to take steps to ensure that the comparatively small amount of additional resources necessary to meet a demand so crucial to development were made promptly available.

252. The Secretariat was encouraged to continue exploring various means of responding to the growing need for uniform interpretation of UNCITRAL texts. Such uniform interpretation was considered indispensable for the effective implementation of UNCITRAL texts. It was noted that some instruments that had emanated from the work of UNCITRAL explicitly prescribed that, in their interpretation, regard should be had to their international character and to the need to promote uniformity in their application and the observance of good faith in international trade (see para. 220 (b) above). Continuing work of the Secretariat on the CLOUT system as a means of complying with such a requirement was considered vital. Concern over the lack of sufficient resources in the Secretariat to sustain and expand such work was noted. Building partnerships with interested institutions and exploring various other means, besides seeking additional resources from the regular budget of the United Nations, were mentioned as possible ways to address that concern. The Commission also took note of the desirability of establishing within its secretariat a third pillar, concentrating on the promotion of ways and means of encouraging uniform interpretation of UNCITRAL texts (see also paras. 149-158 above).

D. Internship programme

253. The Commission recalled its deliberation on the considerations taken by the secretariat in selecting candidates for internship.[107] The Commission was informed

[107] Ibid., *Sixty-sixth Session, Supplement No. 17* (A/66/17), paras. 328-330.

that, since the secretariat's oral report to the Commission at its forty-fourth session, in July 2011, 11 new interns had undertaken an internship with the Secretariat. The Commission was further informed that during that period the Secretariat had faced problems with last-minute cancellation of internships by candidates from developing countries and difficulties in finding on the roster eligible and qualified candidates from African States and Latin American and Caribbean States, as well as candidates with Arabic language skills.

E. Evaluation of the role of the Secretariat in facilitating the work of the Commission

254. The Commission recalled that at its fortieth session,[108] in 2007, it had been informed of the programme budget for the biennium 2008-2009, which listed among the expected accomplishments of the Secretariat "facilitating the work of UNCITRAL". The performance measure for that expected accomplishment was the level of satisfaction of UNCITRAL with the services provided, as evidenced by a rating on a scale ranging from 1 to 5 (5 being the highest rating).[109] The Commission had agreed to provide feedback to the Secretariat and, at the close of the forty-fourth session, a questionnaire on the level of satisfaction with services provided by the Secretariat had been circulated.[110] The Commission was informed that the questionnaire had elicited replies from six delegations, with an average rating of 4.83.

F. Election of UNCITRAL member States

255. The Commission was informed that the term of 30 member States of the Commission (see para. 4 above) would expire on the day prior to the opening of the forty-sixth session of the Commission, in 2013. The Commission noted that the election to fill the vacancies in the Commission was scheduled to take place during the sixty-seventh session of the General Assembly.[111] It was further noted that retiring member States would be eligible for re-election and that elected member States would serve a six-year term.

G. Documents related to the working methods of UNCITRAL

256. The Commission was informed that, pursuant to the request by the Commission at its forty-fourth session, in 2011,[112] the Secretariat had updated the UNCITRAL website to ensure that all documents related to the working methods of UNCITRAL were made available on the web page entitled "Methods of Work" in the section entitled "About UNCITRAL".

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[108] Ibid., *Sixty-second Session, Supplement No. 17* (A/62/17), part one, para. 243.

[109] A/62/6 (Sect. 8) and Corr.1, table 8.19 (d).

[110] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 17* (A/66/17), para. 331.

[111] Item 111 (b) of the provisional agenda of the sixty-seventh session of the General Assembly (A/67/150).

[112] Ibid., para. 297.

XXV. Date and place of future meetings

257. The Commission recalled that, at its thirty-sixth session, in 2003, it had agreed that: (a) its working groups should normally meet for a one-week session twice a year; (b) extra time, if required, could be allocated to a working group from the unused entitlement of another working group provided that such arrangement would not result in an increase in the total number of 12 weeks of conference services per year currently allotted to sessions of all six working groups of the Commission; and (c) if any request by a working group for extra time would result in an increase in the 12-week allotment, the request should be reviewed by the Commission, with proper justification being given by that working group regarding the reasons for which a change in the meeting pattern was needed.[113]

258. The Commission took note of paragraph 48 of General Assembly resolution 66/246 on questions relating to the proposed programme budget for the biennium 2012-2013, by which the Assembly had decided to increase non-post resources in order to provide sufficient funding for servicing the work of the Commission for 14 weeks and to retain the rotation scheme between Vienna and New York. In the light of that decision, the Commission noted that the total number of 12 weeks of conference services per year could continue being allotted to six working groups of the Commission meeting twice a year for one week if annual sessions of the Commission were no longer than two weeks. Otherwise, adjustments would need to be made within the current 14-week allotment for all sessions of the Commission and its working groups.

A. Forty-sixth session of the Commission

259. In the light of the considerations set out above, the Commission approved the holding of its forty-sixth session in Vienna from 8 to 26 July 2013. The Secretariat was requested to consider shortening the duration of the session by one week if the expected workload of the session would justify doing so.

B. Sessions of working groups

Sessions of working groups between the forty-fifth and the forty-sixth sessions of the Commission

260. In the light of the considerations set out above, the Commission approved the following schedule of meetings for its working groups:

(a) Working Group II (Arbitration and Conciliation) would hold its fifty-seventh session in Vienna from 1 to 5 October 2012 and its fifty-eighth session in New York from 4 to 8 February 2013;

(b) Working Group III (Online Dispute Resolution) would hold its twenty-sixth session in Vienna from 5 to 9 November 2012 and its twenty-seventh session in New York from 20 to 24 May 2013;

[113] Ibid., *Fifty-eighth Session, Supplement No. 17* (A/58/17), para. 275.

(c) Working Group IV (Electronic Commerce) would hold its forty-sixth session in Vienna from 29 October to 2 November 2012 and its forty-seventh session in New York from 13 to 17 May 2013;

(d) Working Group V (Insolvency Law) would hold its forty-second session in Vienna from 26 to 30 November 2012 and its forty-third session in New York from 15 to 19 April 2013;

(e) Working Group VI (Security Interests) would hold its twenty-second session in Vienna from 10 to 14 December 2012 and its twenty-third session in New York from 8 to 12 April 2013.

261. The Commission authorized the Secretariat to adjust the schedule of working group meetings according to the needs of the working groups. The Secretariat was requested to post on the UNCITRAL website the final schedule of the working group meetings once the dates had been confirmed.

Additional time

262. Tentative arrangements were made for sessions to be held in Vienna from 3 to 7 December 2012 and in New York from 11 to 15 February 2013. That time could be used to accommodate the need for holding colloquiums, subject to consultation with States.

Sessions of working groups in 2013 after the forty-sixth session of the Commission

263. The Commission noted that tentative arrangements had been made for working group meetings in 2013 after its forty-sixth session, subject to the approval of the Commission at that session:

(a) Working Group I (Procurement) would hold its twenty-second session in Vienna from 23 to 27 September 2013;

(b) Working Group II (Arbitration and Conciliation) would hold its fifty-ninth session in Vienna from 16 to 20 September 2013;

(c) Working Group III (Online Dispute Resolution) would hold its twenty-eighth session in Vienna from 7 to 11 October 2013;

(d) Working Group IV (Electronic Commerce) would hold its forty-eighth session in Vienna from 30 September to 4 October 2013;

(e) Working Group V (Insolvency Law) would hold its forty-fourth session in Vienna from 16 to 20 December 2013;

(f) Working Group VI (Security Interests) would hold its twenty-fourth session in Vienna from 25 to 29 November 2013.

Annex I

Recommendations to assist arbitral institutions and other interested bodies with regard to arbitration under the UNCITRAL Arbitration Rules as revised in 2010

A. Introduction

1. The UNCITRAL Arbitration Rules as revised in 2010

1. The UNCITRAL Arbitration Rules were originally adopted in 1976[1] and have been used for the settlement of a broad range of disputes, including disputes between private commercial parties where no arbitral institution is involved, commercial disputes administered by arbitral institutions, investor-State disputes and State-to-State disputes. The Rules are recognized as one of the most successful international instruments of a contractual nature in the field of arbitration. They have also strongly contributed to the development of the arbitration activities of many arbitral institutions in all parts of the world.

2. The 1976 UNCITRAL Arbitration Rules were revised in 2010[2] to better conform to current practices in international trade and to account for changes in arbitral practice over the past 30 years. The revision was aimed at enhancing the efficiency of arbitration under the 1976 UNCITRAL Arbitration Rules and did not alter the original structure of the text, its spirit or its drafting style. The UNCITRAL Arbitration Rules as revised in 2010 have been in effect since 15 August 2010.

2. General Assembly resolution 65/22

3. In 2010, the General Assembly, by its resolution 65/22, recommended the use of the UNCITRAL Arbitration Rules as revised in 2010 in the settlement of disputes arising in the context of international commercial relations. That recommendation was based on the conviction that "the revision of the Arbitration Rules in a manner that is acceptable to countries with different legal, social and economic systems can significantly contribute to the development of harmonious international economic relations and to the continuous strengthening of the rule of law".

4. In that resolution, the General Assembly noted that "the revised text can be expected to contribute significantly to the establishment of a harmonized legal framework for the fair and efficient settlement of international commercial disputes".

3. Purpose of the recommendations

5. The present recommendations are made with regard to the use of the UNCITRAL Arbitration Rules. (For recommendations on the use of the 1976 UNCITRAL Arbitration Rules, see the "Recommendations to assist arbitral institutions and other interested bodies with regard to arbitrations under the

[1] *Official Records of the General Assembly, Thirty-first Session, Supplement No. 17* (A/31/17), para. 57.

[2] Ibid., *Sixty-fifth Session, Supplement No. 17* (A/65/17), paras. 13-187 and annex I.

UNCITRAL Arbitration Rules",[3] adopted at the fifteenth session of UNCITRAL, in 1982.) Their purpose is to inform and assist arbitral institutions and other interested bodies that envisage using the UNCITRAL Arbitration Rules as described in paragraph 6 below.

4. Different usages by arbitral institutions and other interested bodies

6. The UNCITRAL Arbitration Rules have been used in the following different ways by arbitral institutions and other interested bodies, including chambers of commerce and trade associations:

(a) They have served as a model for institutions drafting their own arbitration rules. The degree to which the UNCITRAL Arbitration Rules have been used as a drafting model ranges from inspiration to full adoption of the Rules (see section B below);

(b) Institutions have offered to administer disputes under the UNCITRAL Arbitration Rules or to render administrative services in ad hoc arbitrations under the Rules (see section C below);

(c) An institution (or a person) may be requested to act as appointing authority, as provided for under the UNCITRAL Arbitration Rules (see section D below).

B. Adoption of the UNCITRAL Arbitration Rules as the institutional rules of arbitral institutions or other interested bodies

1. Appeal to leave the substance of the UNCITRAL Arbitration Rules unchanged

7. Institutions, when preparing or revising their institutional rules, may wish to consider adopting the UNCITRAL Arbitration Rules as a model.[4] An institution that intends to do so should take into account the expectations of the parties that the rules of the institution will then faithfully follow the text of the UNCITRAL Arbitration Rules.

8. This appeal to follow closely the substance of the UNCITRAL Arbitration Rules does not mean that the particular organizational structure and needs of a given institution should be neglected. Institutions adopting the UNCITRAL Arbitration Rules as their institutional rules will certainly need to add provisions, for instance on administrative services or fee schedules. In addition, formal modifications, affecting very few provisions of the UNCITRAL Arbitration Rules, as indicated below in paragraphs 9-17, should be taken into account.

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[3] Ibid., *Thirty-seventh Session, Supplement No. 17* and corrigenda (A/37/17 and Corr.1 and 2), annex I.

[4] See, for example, the Arbitration Rules of the Cairo Regional Centre for International Commercial Arbitration in force as from 1 March 2011 (available from www.crcica.org.eg) or the Arbitration Rules (as revised in 2010) of the Kuala Lumpur Regional Centre for Arbitration (available from www.klrca.org.my).

2. Presentation of modifications

(a) A short explanation

9. If an institution uses the UNCITRAL Arbitration Rules as a model for drafting its own institutional rules, it may be useful for the institution to consider indicating where those rules diverge from the UNCITRAL Arbitration Rules. Such indication may be helpful to the readers and potential users who would otherwise have to embark on a comparative analysis to identify any disparity.

10. The institution may wish to include a text, for example a foreword, which refers to the specific modifications included in the institutional rules as compared with the UNCITRAL Arbitration Rules.[5] The indication of the modifications could also come at the end of the text of the institutional rules.[6] Further, it might be advisable to accompany the institutional rules with a short explanation of the reasons for the modifications.[7]

(b) Effective date

11. Article 1, paragraph 2, of the UNCITRAL Arbitration Rules defines an effective date for those Rules. Obviously, the institutional rules based on the UNCITRAL Arbitration Rules will have their own specific date of application. In the interest of legal certainty, it is recommended to refer in the arbitration rules to the effective date of application of the rules so that the parties know which version is applicable.

(c) Communication channel

12. Usually, when an institution administers a case, communications between the parties before the constitution of the arbitral tribunal would be carried out through the institution. Therefore, it is recommended to adapt articles 3 and 4 of the UNCITRAL Arbitration Rules relating to communication before the constitution of the arbitral tribunal. For example, in relation to article 3, paragraph 1:

(a) If the communications take place through the institution, article 3, paragraph 1, could be amended as follows:

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[5] For example, in the introduction to the Arbitration Rules of the Cairo Regional Centre for International Commercial Arbitration in force as from 1 March 2011, it is provided that those rules "are based upon the new UNCITRAL Arbitration Rules, as revised in 2010, with minor modifications emanating mainly from the Centre's role as an arbitral institution and an appointing authority". The Arbitration Rules (as revised in 2010) of the Kuala Lumpur Regional Centre of Arbitration provide that the rules for arbitration of the institution shall be the "UNCITRAL Arbitration Rules as modified in accordance with the rules set out below".

[6] See, for example, the Permanent Court of Arbitration Optional Rules for Arbitration between International Organizations and Private Parties, effective 1 July 1996 (based on the 1976 version of the UNCITRAL Arbitration Rules); available from www.pca-cpa.org/showfile.asp?fil_id=201.

[7] For example, in the text of the Permanent Court of Arbitration Optional Rules for Arbitrating Disputes between Two Parties of Which Only One Is a State, effective 6 July 1993 (available from www.pca-cpa.org/showfile.asp?fil_id=194), the following note is inserted: "These Rules are based on the [1976] UNCITRAL Arbitration Rules, with the following modifications: ... Modifications to indicate the functions of the Secretary-General and the International Bureau of the Permanent Court of Arbitration: Article 1, para. 4 (added) ...".

> 1. The party or parties initiating recourse to arbitration (hereinafter called the "claimant") shall communicate to [name of the institution] a notice of arbitration. [Name of the institution] shall communicate the notice of arbitration to the other party or parties (hereinafter called the "respondent") [without undue delay] [immediately].

Or as follows:

> 1. The party or parties initiating recourse to arbitration (hereinafter called the "claimant") shall file with [name of the institution] a notice of arbitration and [name of the institution] shall communicate it to the other party or parties (hereinafter called the "respondent").[8]

(b) If the institution receives copies of the communications, article 3, paragraph 1, would remain unchanged, and the following provision could be added:

> All documents transmitted pursuant to articles 3 and 4 of the UNCITRAL Arbitration Rules shall be served on [name of the institution] at the time of such transmission to the other party or parties or immediately thereafter.[9]

13. To address the matter of communications after the constitution of the arbitral tribunal, the institution may either:

(a) Modify each article in the UNCITRAL Arbitration Rules referring to communications, namely: article 5; article 11; article 13, paragraph 2; article 17, paragraph 4; article 20, paragraph 1; article 21, paragraph 1; article 29, paragraphs 1, 3 and 4; article 34, paragraph 6; article 36, paragraph 3; article 37, paragraph 1; article 38, paragraphs 1 and 2; article 39, paragraph 1; article 41, paragraphs 3 and 4; or

(b) Include in article 17 of the UNCITRAL Arbitration Rules a provision along the lines of:

> (i) If the institution decides to receive all communications for the purpose of notification:
>
> "Except as otherwise permitted by the arbitral tribunal, all communications addressed to the arbitral tribunal by a party shall be filed with the [name of the institution] for notification to the arbitral tribunal and the other party or parties. All communications addressed from the arbitral tribunal to a party shall be filed with the [name of the institution] for notification to the other party or parties.";[10] or
>
> (ii) If the institution decides to receive copies of all communications for the purpose of information:

[8] For example, this is the approach adopted in the Arbitration Rules of the Cairo Regional Centre for International Commercial Arbitration in force as from 1 March 2011.

[9] For example, a similar approach can be found in Rule 2, paragraph 1, of the Arbitration Rules (as revised in 2010) of the Kuala Lumpur Regional Centre for Arbitration.

[10] For example, a similar provision is included in article 17, paragraph 5, of the Arbitration Rules of the Cairo Regional Centre for International Commercial Arbitration in force as from 1 March 2011.

"Except as otherwise permitted by the arbitral tribunal, all communications between the arbitral tribunal and any party shall also be sent to [name of the institution]."

14. In the interest of procedural efficiency, it might be appropriate for an institution to consider whether to require receiving copies of communications only after the constitution of the arbitral tribunal. If such requirement is adopted by the institution, it would be advisable to refer to the receipt of the copies in a manner that is technology-neutral, in order not to exclude new and evolving technologies. To receive copies of communications through new technologies could also result in a desirable reduction of costs for the institution.

(d) Substitution of the reference to the "appointing authority" by the name of the institution

15. Where an institution uses the UNCITRAL Arbitration Rules as a model for its institutional rules, the institution typically carries out the functions attributed to the appointing authority under the Rules; it therefore should amend the corresponding provisions of the Rules as follows:

(a) Article 3, paragraph 4 (a); article 4, paragraph 2 (b); article 6, paragraphs 1-4; and the reference to the designating authority in article 6, paragraph 5, should be deleted;

(b) The term "appointing authority" could be replaced by the name of the institution in the following provisions: article 6, paragraphs 5-7; article 7, paragraph 2; article 8, paragraphs 1 and 2; article 9, paragraphs 2 and 3; article 10, paragraph 3; article 13, paragraph 4; article 14, paragraph 2; article 16; article 43, paragraph 3; and, if the arbitral institution adopts the review mechanism to the extent compatible with its own institutional rules, article 41, paragraphs 2-4. As an alternative, a rule clarifying that reference to the appointing authority shall be understood as a reference to the institution could be added, along the following lines: "The functions of the appointing authority under the UNCITRAL Arbitration Rules are fulfilled by [name of the institution]."

16. If the functions of an appointing authority are fulfilled by an organ of the institution, it is advisable to explain the composition of that organ and, if appropriate, the nomination process of its members, in an annex, for example. In the interest of certainty, it may be advisable for an institution to clarify whether the reference to the organ is meant to be to the function and not to the person as such (i.e. in case the person is not available, the function could be fulfilled by his or her deputy).

(e) Fees and schedule of fees

17. Where an institution adopts the UNCITRAL Arbitration Rules as its own institutional rules:

(a) The provisions of article 40, paragraph 2 (f), would not apply;[11]

[11] An arbitral institution, may, however, retain article 40, paragraph 2 (f), for cases in which the arbitral institution would not act as appointing authority. For example, the Qatar International Center for Conciliation and Arbitration states in article 43, paragraph 2 (h), of its Rules of

(b) The institution may include the fee review mechanism as set out in article 41 of the Rules (as adjusted to the needs of the institution).[12]

C. Arbitral institutions and other interested bodies administering arbitration under the UNCITRAL Arbitration Rules or providing some administrative services

18. One measure of the success of the UNCITRAL Arbitration Rules in achieving broad applicability and in demonstrating their ability to meet the needs of parties in a wide range of legal cultures and types of disputes has been the significant number of independent institutions that have declared themselves willing to administer (and that do administer) arbitrations under the UNCITRAL Arbitration Rules, in addition to proceedings under their own rules. Some arbitral institutions have adopted procedural rules for offering to administer arbitrations under the UNCITRAL Arbitration Rules.[13] Further, parties have also turned to institutions in order to receive some administrative services, in contrast to having the arbitral proceedings fully administered by the arbitral institution.[14]

Arbitration 2012 (effective 1 May 2012), which are based on the UNCITRAL Arbitration Rules as revised in 2010: "Any fees and expenses of the appointing authority in case the Center is not designated as the appointing authority."

[12] Such an approach has been adopted by the Cyprus Arbitration and Mediation Centre, which based its Arbitration Rules on the UNCITRAL Arbitration Rules.

[13] For example, the Permanent Court of Arbitration (PCA) indicates on its website (www.pca-cpa.org) that "in addition to the role of designating appointing authorities, the Secretary-General of the PCA will act as the appointing authority under the UNCITRAL Arbitration Rules when the parties so agree. The PCA also frequently provides full administrative support in arbitrations under the UNCITRAL Arbitration Rules." The London Court of International Arbitration (LCIA) indicates on its website (www.lcia.org) that "the LCIA regularly acts both as appointing authority and as administrator in arbitrations conducted pursuant to the UNCITRAL arbitration rules. Further information: Recommended clauses for adoption by the parties for these purposes; the range of administrative services offered; and details of the LCIA charges for these services are available on request from the Secretariat". See also the UNCITRAL Arbitration Rules Administered by the German Institution of Arbitration (available from www.dis-arb.de); the Administrative and Procedural Rules for Arbitration under the UNCITRAL Arbitration Rules as amended and effective on 1 July 2009 of the Japan Commercial Arbitration Association (JCAA) (available from www.jcaa.or.jp); and the Hong Kong International Arbitration Centre (HKIAC) Procedures for the Administration of International Arbitration, adopted to take effect from 31 May 2005 (available from www.hkiac.org). (The Administrative and Procedural Rules for Arbitration under the UNCITRAL Arbitration Rules of JCAA and the HKIAC Procedures for the Administration of International Arbitration are both, at the date of the present recommendations, based on the 1976 UNCITRAL Arbitration Rules.)

[14] For example, the HKIAC Procedures for the Administration of International Arbitration state in their introduction: "Nothing in these Procedures shall prevent parties to a dispute under the UNCITRAL Rules from naming the HKIAC as appointing authority, nor from requesting certain administrative services from the HKIAC without subjecting the arbitration to the provisions contained in the Procedures. Neither the designation of the HKIAC as appointing authority under the Rules nor a request by the parties or the tribunal for specific and discrete administrative assistance from the HKIAC shall be construed as a designation of the HKIAC as administrator of the arbitration as described in these Procedures. Conversely, unless otherwise stated, a request for administration by the HKIAC will be construed as a designation of the

19. The following remarks and suggestions are intended to assist any interested institutions in taking the necessary organizational measures and in devising appropriate administrative procedures in conformity with the UNCITRAL Arbitration Rules when they either fully administer a case under the Rules or only provide certain administrative services in relation to arbitration under the Rules. It may be noted that institutions, while offering services under the UNCITRAL Arbitration Rules as revised in 2010, are continuing to also offer services under the 1976 UNCITRAL Arbitration Rules.[15]

I. Administrative procedures in conformity with the UNCITRAL Arbitration Rules

20. In devising administrative procedures or rules, the institutions should have due regard to the interests of the parties. Since the parties in these cases have agreed that the arbitration is to be conducted under the UNCITRAL Arbitration Rules, their expectations should not be frustrated by administrative rules that would conflict with the UNCITRAL Arbitration Rules. The modifications that the UNCITRAL Arbitration Rules would need to undergo to be administered by an institution are minimal and similar to those mentioned above in paragraphs 9-17. It is advisable that the institution clarify the administrative services it would render by either:

(a) Listing them; or

(b) Proposing to the parties a text of the UNCITRAL Arbitration Rules highlighting the modifications made to the Rules for the sole purpose of the administration of the arbitral proceedings; in the latter case, it is recommended to indicate that the UNCITRAL Arbitration Rules are "as administered by [name of the institution]" so that the user is notified that there is a difference from the original UNCITRAL Arbitration Rules.[16]

21. It is further recommended that:

(a) The administrative procedures of the institution distinguish clearly between the functions of an appointing authority as envisaged under the UNCITRAL Arbitration Rules (see section D below) and other full or partial administrative assistance, and the institution should declare whether it is offering both or only one of these types of services;

(b) An institution which is prepared either to fully administer a case under the UNCITRAL Arbitration Rules or to provide certain administrative services of a technical and secretarial nature describe in its administrative procedures the services offered; such services may be rendered upon request of the parties or the arbitral tribunal.

HKIAC as appointing authority and administrator pursuant to these Procedures."

[15] For an illustration, see the services offered under both versions of the UNCITRAL Arbitration Rules by the Arbitration Institute of the Stockholm Chamber of Commerce (www.sccinstitute.com).

[16] See, as an illustration of such an approach, the UNCITRAL Arbitration Rules Administered by the German Institution of Arbitration.

22. In describing the administrative services, it is recommended that the institution indicate:

(a) Which services would be covered by its general administrative fee and which would not (i.e. which would be billed separately);[17]

(b) The services provided within its own facilities and those arranged to be rendered by others;

(c) That parties could also choose to have only a particular service (or services) rendered by the institution without having the arbitral proceedings fully administered by the institution (see para. 18 above and paras. 23-25 below).

2. Offer of administrative services

23. The following list of possible administrative services, which is not intended to be exhaustive, may assist institutions in considering and publicizing the services they may offer:

(a) Maintenance of a file of written communications;[18]

(b) Facilitating communication;[19]

(c) Providing necessary practical arrangements for meetings and hearings, including:

(i) Assisting the arbitral tribunal in establishing the date, time and place of hearings;

(ii) Meeting rooms for hearings or deliberations of the arbitral tribunal;

(iii) Telephone conference and videoconference facilities;

(iv) Stenographic transcripts of hearings;

(v) Live streaming of hearings;

(vi) Secretarial or clerical assistance;

(vii) Making available or arranging for interpretation services;

(viii) Facilitating entry visas for the purposes of hearings when required;

(ix) Arranging accommodation for parties and arbitrators;

[17] For example, in the Bahrain Chamber for Dispute Resolution (BCDR) Arbitration Rules, it is stated: "The fees described above do not cover the cost of hearing rooms, which are available on a rental basis. Check with the BCDR for availability and rates." The BCDR Arbitration Rules are from 2009 and based on the 1976 UNCITRAL Arbitration Rules.

[18] The maintenance of a file of written communications could include a full file of written correspondence and submissions to facilitate any inquiry that arises and to prepare such copies as the parties or the tribunal may require at any time during the arbitral proceedings. In addition, the maintenance of such a file could include, automatically or only upon request by the parties, the forwarding of the written communications of a party or the arbitrators.

[19] Facilitating communication could include ensuring that communications among parties, attorneys and the tribunal are kept open and up to date, and may also consist in merely forwarding written communications.

(d) Providing fund-holding services;[20]

(e) Ensuring that procedurally important dates are followed and advising the arbitral tribunal and the parties when not adhered to;

(f) Providing procedural directions on behalf of the tribunal, if and when required;[21]

(g) Providing secretarial or clerical assistance in other respects;[22]

(h) Providing assistance for obtaining certified copies of any award, including notarized copies, where required;

(i) Providing assistance for the translation of arbitral awards;

(j) Providing services with respect to the storage of arbitral awards and files relating to the arbitral proceedings.[23]

3. Administrative fee schedule

24. The institution, when indicating the fee it charges for its services, may reproduce its administrative fee schedule or, in the absence thereof, indicate the basis for calculating it.[24]

25. In view of the possible categories of services an institution may offer, such as functioning as an appointing authority and/or providing administrative services (see para. 21 above), it is recommended that the fee for each category be stated separately (see para. 22 above). Thus, an institution may indicate its fees for:

(a) Acting as an appointing authority only;

(b) Providing administrative services without acting as an appointing authority;

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[20] Fund-holding services usually consist of the receipt and the disbursement of funds received from the parties. They include the setting up of a dedicated bank account, into which sums are paid by the parties, as directed by the tribunal. The institution typically disburses funds from that account to cover costs, accounting periodically to the parties and to the tribunal for funds lodged and disbursed. The institution usually credits the interests on the funds to the party that has lodged the funds at the prevailing rate of the bank where the account is kept. Fund-holding services could also include more broadly the calculation and collection of a deposit as security for the estimated costs of arbitration. If the institution is fully administering the arbitral proceedings, then the fund-holding services may extend to more closely monitoring the costs of the arbitration, in particular ensuring that fees-and-costs notes are regularly submitted and the level of further advances calculated, in consultation with the tribunal, and by reference to the established procedural timetable.

[21] Providing procedural directions on behalf of the tribunal, if and when required, relates most typically to directions for advances on costs.

[22] The provision of secretarial or clerical assistance could include proofreading draft awards to correct typographical and clerical errors.

[23] Storage of documents relating to the arbitral proceedings might be an obligation under the applicable law.

[24] See, for example, article 42, paragraph 4, on definition of costs, of the Arbitration Rules of the Cairo Regional Centre for International Commercial Arbitration, which entered into force on 1 March 2011, according to which the provisions of its section on the costs of arbitration shall apply by default in case the parties to ad hoc arbitrations agree that the Centre will provide its administrative services to such arbitrations.

(c) Acting as an appointing authority and providing administrative services.

4. Draft model clauses

26. In the interest of procedural efficiency, institutions may wish to set forth in their administrative procedures model arbitration clauses covering the above services. It is recommended that:

(a) Where the institution fully administers arbitration under the UNCITRAL Arbitration Rules, the model clause should read as follows:

> "Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules administered by [name of the institution]. [Name of the institution] shall act as appointing authority."

(b) Where the institution provides certain services only, the agreement as to the services that are requested should be indicated:

> "Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules. [Name of the institution] shall act as appointing authority and provide administrative services in accordance with its administrative procedures for cases under the UNCITRAL Arbitration Rules."

(c) In both cases, as suggested in the model arbitration clause in the annex to the UNCITRAL Arbitration Rules, parties should consider adding the following note:

> "(a) The number of arbitrators shall be [one or three];
>
> "(b) The place of arbitration shall be [city and country];
>
> "(c) The language to be used in the arbitral proceedings shall be [language]".

D. Arbitral institution acting as appointing authority

27. An institution (or a person) may act as appointing authority under the UNCITRAL Arbitration Rules. It is noteworthy that article 6 of the Rules highlights the importance of the role of the appointing authority. Parties are invited to agree on an appointing authority at the time that they conclude the arbitration agreement, if possible. Alternatively, the appointing authority could be appointed by the parties at any time during the arbitration proceedings.

28. Arbitral institutions are usually experienced with fulfilling functions similar to those required from an appointing authority under the Rules. For an individual who takes on that responsibility for the first time, it is important to note that, once designated as appointed authority, he or she must be and must remain independent and be prepared to act promptly for all purposes under the Rules.

29. An institution that is willing to act as appointing authority under the UNCITRAL Arbitration Rules may indicate in its administrative procedures the

various functions of an appointing authority envisaged by the Rules. It may also describe the manner in which it intends to perform these functions.

30. The UNCITRAL Arbitration Rules foresee six main functions for the appointing authority: (a) appointment of arbitrators; (b) decisions on the challenge of arbitrators; (c) replacement of arbitrators; (d) assistance in fixing the fees of arbitrators; (e) participation in the review mechanism on the costs and fees; and (f) advisory comments regarding deposits. The paragraphs that follow are intended to provide some guidance on the role of the appointing authority under the UNCITRAL Arbitration Rules based on the *travaux préparatoires*.

1. Designating and appointing authorities (article 6)

31. Article 6 was included as a new provision in the UNCITRAL Arbitration Rules as revised in 2010 to clarify for the users of the Rules the importance of the role of the appointing authority, particularly in the context of non-administered arbitration.[25]

(a) Procedure for choosing or designating an appointing authority (article 6, paragraphs 1-3)

32. Article 6, paragraphs 1-3, determines the procedure to be followed by the parties in order to choose an appointing authority, or to have one designated in case of disagreement. Paragraph 1 expresses the principle that the appointing authority can be appointed by the parties at any time during the arbitration proceedings, not only in some limited circumstances.[26]

(b) Failure to act: substitute appointing authority (article 6, paragraph 4)

33. Article 6, paragraph 4, addresses the situation where an appointing authority refuses or fails to act within a time period provided by the Rules or fails to decide on a challenge to an arbitrator within a reasonable time after receiving a party's request to do so. Then, any party may request the Secretary-General of the Permanent Court of Arbitration to designate a substitute appointing authority. The failure to act of the appointing authority in the context of the fee review mechanism under article 41, paragraph 4, of the Rules, does not fall under article 6, paragraph 4 ("except as referred to in article 41, paragraph 4") but is dealt with directly in article 41, paragraph 4 (see para. 58 below).[27]

(c) Discretion in the exercise of its functions (article 6, paragraph 5)

34. Article 6, paragraph 5, provides that, in exercising its functions under the Rules, the appointing authority may require from any party and the arbitrators the information it deems necessary. That provision was included in the UNCITRAL Arbitration Rules to explicitly provide the appointing authority with the power to require information not only from the parties, but also from the arbitrators. The

[25] *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17* (A/65/17), para. 42, and A/CN.9/619, para. 69.

[26] A/CN.9/619, para. 69.

[27] *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17* (A/65/17), para. 49.

arbitrators are explicitly mentioned in the provision, as there are instances, such as a challenge procedure, in which the appointing authority, in exercising its functions, may require information from the arbitrators.[28]

35. In addition, article 6, paragraph 5, provides that the appointing authority shall give the parties and, where appropriate, the arbitrators, an opportunity to present their views in any manner the appointing authority considers appropriate. During the deliberations on the revisions to the Rules, it was agreed that the general principle should be included that the parties should be given an opportunity to be heard by the appointing authority.[29] That opportunity should be given "in any manner" the appointing authority "considers appropriate", in order to better reflect the discretion of the appointing authority in obtaining views from the parties.[30]

36. Article 6, paragraph 5, determines that all such communications to and from the appointing authority shall be provided by the sender to all other parties. That provision is consistent with article 17, paragraph 4, of the Rules.

(d) General provision on appointment of arbitrators (article 6, paragraphs 6 and 7)

37. Article 6, paragraph 6, provides that, when the appointing authority is requested to appoint an arbitrator pursuant to articles 8, 9, 10 or 14, the party making the request shall send to the appointing authority copies of the notice of arbitration and, if it exists, any response to the notice of arbitration.

38. Article 6, paragraph 7, provides that the appointing authority shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator. To that end, paragraph 7 states that the appointing authority shall take into account the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties (see also para. 44 below).

2. Appointment of arbitrators

(a) Appointment of a sole arbitrator (article 7, paragraph 2, and article 8)

39. The UNCITRAL Arbitration Rules envisage various possibilities concerning the appointment of an arbitrator by an appointing authority. Under article 8, paragraph 1, the appointing authority may be requested to appoint a sole arbitrator, in accordance with the procedures and criteria set forth in article 8, paragraph 2. The appointing authority shall appoint the sole arbitrator as promptly as possible and shall intervene only at the request of a party. The appointing authority may use the list-procedure as defined in article 8, paragraph 2. It should be noted that the appointing authority has discretion pursuant to article 8, paragraph 2, to determine that the use of the list-procedure is not appropriate for the case.

40. Article 7, dealing with the number of arbitrators, provides as a default rule that, in case parties do not agree on the number of arbitrators, three arbitrators should be appointed. However, article 7, paragraph 2, includes a corrective mechanism so that, if no other parties have responded to a party's proposal to appoint a sole arbitrator and the party (or parties) concerned have failed to appoint a

[28] A/CN.9/WG.II/WP.157, para. 22.
[29] A/CN.9/619, para. 76.
[30] A/CN.9/665, para. 54.

second arbitrator, the appointing authority may, at the request of a party, appoint a sole arbitrator if it determines that, in view of the circumstances of the case, this is more appropriate. That provision has been included in the Rules to avoid situations where, despite the claimant's proposal in its notice of arbitration to appoint a sole arbitrator, a three-member arbitral tribunal has to be constituted owing to the respondent's failure to react to that proposal. It provides a useful corrective mechanism in case the respondent does not participate in the process and the arbitration case does not warrant the appointment of a three-member arbitral tribunal. That mechanism is not supposed to create delays, as the appointing authority will in any event have to intervene in the appointment process. The appointing authority should have all relevant information or require information under article 6, paragraph 5, to make its decision on the number of arbitrators.[31] Such information would include, in accordance with article 6, paragraph 6, copies of the notice of arbitration and any response thereto.

41. When an appointing authority is requested under article 7, paragraph 2, to determine whether a sole arbitrator is more appropriate for the case, circumstances to be taken into consideration include the amount in dispute and the complexity of the case (including the number of parties involved),[32] as well as the nature of the transaction and of the dispute.

42. In some cases, the respondent might not take part in the constitution of the arbitral tribunal, so that the appointing authority has before it the information received from the claimant only. Then, the appointing authority can make its assessment only on the basis of that information, being aware that it might not reflect all aspects of the proceedings to come.

(b) Appointment of a three-member arbitral tribunal (article 9)

43. The appointing authority may be requested by a party, under article 9, paragraph 2, to appoint the second of three arbitrators in case a three-arbitrator panel is to be appointed. If the two arbitrators cannot agree on the choice of the third (presiding) arbitrator, the appointing authority can be called upon to appoint the third arbitrator under article 9, paragraph 3. That appointment would take place in the same manner that a sole arbitrator would be appointed under article 8. In accordance with article 8, paragraph 1, the appointing authority should act only at the request of a party.[33]

44. When an appointing authority is asked to appoint the presiding arbitrator pursuant to article 9, paragraph 3, factors that might be taken into consideration include the experience of the arbitrator and the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties (see para. 38 above, on article 6, paragraph 7).

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[31] Ibid., paras. 62-63.

[32] For example, if one party is a State, whether there are (or will potentially be) counterclaims or set-off claims.

[33] *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17* (A/65/17), para. 59.

(c) Multiple claimants or respondents (article 10)

45. Article 10, paragraph 1, provides that, in case of multiple claimants or respondents and unless otherwise agreed, the multiple claimants, jointly, and the multiple respondents, jointly, shall appoint an arbitrator. In the absence of such a joint nomination and if all parties are unable to otherwise agree on a method for the constitution of the arbitral tribunal, the appointing authority shall, upon the request of any party pursuant to article 10, paragraph 3, constitute the arbitral tribunal and designate one of the arbitrators to act as the presiding arbitrator.[34] An illustration of a case in which parties on either side could be unable to make such an appointment is if the number of either claimants or respondents is very large or if they not form a single group with common rights and obligations (for instance, cases involving a large number of shareholders).[35]

46. The power of the appointing authority to constitute the arbitral tribunal is broadly formulated in article 10, paragraph 3, in order to cover all possible failures to constitute the arbitral tribunal under the Rules and is not limited to multiparty cases. Also, it is noteworthy that the appointing authority has the discretion to revoke any appointment already made and to appoint or reappoint each of the arbitrators.[36] The principle in paragraph 3 that the appointing authority shall appoint the entire arbitral tribunal when parties on the same side in a multiparty arbitration are unable to jointly agree on an arbitrator was included in the Rules as an important principle, in particular in situations like the one that gave rise to the case *BKMI and Siemens v. Dutco*.[37] The decision in the *Dutco* case was based on the requirement that parties receive equal treatment, which paragraph 3 addresses by shifting the appointment power to the appointing authority.[38] The *travaux préparatoires* of the UNCITRAL Arbitration Rules show that emphasis was given to maintaining a flexible approach, granting discretionary powers to the appointing authority, in article 10, paragraph 3, in order to accommodate the wide variety of situations arising in practice.[39]

(d) Successful challenge and other reasons for replacement of an arbitrator (articles 12 and 13)

47. The appointing authority may be called upon to appoint a substitute arbitrator under article 12, paragraph 3, or article 13 or 14 of the UNCITRAL Arbitration Rules (failure or impossibility to act, successful challenge and other reasons for replacement; see paras. 49-54 below).

(e) Note for institutions acting as an appointing authority

48. For each of these instances where an institution may be called upon under the UNCITRAL Arbitration Rules to appoint an arbitrator, the institution may provide

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[34] A/CN.9/614, paras. 62-63, and A/CN.9/619, para. 86.

[35] A/CN.9/614, para. 63.

[36] A/CN.9/619, paras. 88 and 90.

[37] *BKMI and Siemens v. Dutco*, French Court of Cassation, 7 January 1992 (see *Revue de l'Arbitrage*, No. 3 (1992), pp. 470-472).

[38] *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17* (A/65/17), para. 60.

[39] A/CN.9/619, para. 90.

details as to how it would select the arbitrator. In particular, it may state whether it maintains a list of arbitrators, from which it would select appropriate candidates, and may provide information on the composition of any such list. It may also indicate which person or organ within the institution would make the appointment (for example, the president, a board of directors, the secretary-general or a committee) and, in the case of a board or committee, how that organ is composed and/or its members would be elected.

3. Decision on challenge of arbitrator

(a) Articles 12 and 13

49. Under article 12 of the UNCITRAL Arbitration Rules, an arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to his or her impartiality or independence. When such a challenge is contested (i.e. if the other party does not agree to the challenge or the challenged arbitrator does not withdraw within 15 days of the notice of the challenge), the party making the challenge may seek a decision on the challenge by the appointing authority pursuant to article 13, paragraph 4. If the appointing authority sustains the challenge, it may also be called upon to appoint the substitute arbitrator.

(b) Note for institution acting as an appointing authority

50. The institution may indicate details as to how it would make the decision on such a challenge in accordance with the UNCITRAL Arbitration Rules. In that regard, the institution may wish to identify any code of ethics of its institution or other written principles which it would apply in ascertaining the independence and impartiality of arbitrators.

4. Replacement of an arbitrator (article 14)

51. Under article 14, paragraph 1, of the UNCITRAL Arbitration Rules, in the event that an arbitrator has to be replaced in the course of the arbitral proceedings, a substitute arbitrator shall normally be appointed or chosen pursuant to the procedure provided for in articles 8-11 of the Rules that was applicable to the appointment or choice of the arbitrator being replaced. That procedure shall apply even if, during the process of appointing the arbitrator to be replaced, a party failed to exercise its right to appoint or to participate in the appointment.

52. This procedure is subject to an exception pursuant to article 14, paragraph 2, of the Rules, which provides the appointing authority with the power to determine, at the request of a party, whether it would be justified for a party to be deprived of its right to appoint a substitute arbitrator. If the appointing authority makes such a determination, it may, after giving an opportunity to the parties and the remaining arbitrators to express their views: (a) appoint the substitute arbitrator; or (b) after the closure of the hearings, authorize the other arbitrators to proceed with the arbitration and make any decision or award.

53. It is noteworthy that the appointing authority should deprive a party of its right to appoint a substitute arbitrator only in exceptional circumstances. To that end, the wording "the exceptional circumstances of the case" in article 14, paragraph 2, was chosen to allow the appointing authority to take account of all circumstances or incidents that might have occurred during the proceedings. The *travaux*

préparatoires of the UNCITRAL Arbitration Rules show that depriving a party of its right to appoint an arbitrator is a serious decision, one which should be taken based on the faulty behaviour of a party to the arbitration and on the basis of a fact-specific inquiry and which should not be subject to defined criteria. Rather, the appointing authority should determine, in its discretion, whether the party has the right to appoint another arbitrator.[40]

54. In determining whether to permit a truncated tribunal to proceed with the arbitration under article 14, paragraph 2 (b), the appointing authority must take into consideration the stage of the proceedings. Bearing in mind that the hearings are already closed, it might be more appropriate, for the sake of efficiency, to allow a truncated tribunal to make any decision or final award than to proceed with the appointment of a substitute arbitrator. Other factors that might be taken into consideration, to the extent feasible, in deciding whether to allow a truncated tribunal to proceed include the relevant laws (i.e. whether the laws would permit or restrict such a procedure) and relevant case law on truncated tribunals.

5. Assistance in fixing fees of arbitrators

(a) Articles 40 and 41

55. Pursuant to article 40, paragraphs 1 and 2, of the UNCITRAL Arbitration Rules, the arbitral tribunal fixes the costs of arbitration. Pursuant to article 41, paragraph 1, the fees and expenses of the arbitrators shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject matter, the time spent by the arbitrators and any other relevant circumstances of the case. In this task, the arbitral tribunal may be assisted by an appointing authority: if the appointing authority applies or has stated that it will apply a schedule or particular method for determining the fees of arbitrators in international cases, the arbitral tribunal, in fixing its fees, shall take that schedule or method into account to the extent that it considers appropriate in the circumstances of the case (article 41, paragraph 2).

(b) Note for institutions acting as an appointing authority

56. An institution willing to act as appointing authority may indicate, in its administrative procedures, any relevant details in respect of assistance in fixing the fees. In particular, it may state whether it has issued a schedule or defined a particular method for determining the fees for arbitrators in international cases as envisaged in article 41, paragraph 2 (see para. 17 above).

6. Review mechanism (article 41)

57. Article 41 of the UNCITRAL Arbitration Rules addresses the fees and expenses of arbitrators and foresees a review mechanism for such fees that involves a neutral body, the appointing authority. Notwithstanding that an institution may have its own rules on fees, it is recommended that the institution acting as appointing authority should follow the rules set out in article 41.

[40] A/CN.9/688, para. 78, and A/CN.9/614, para. 71.

58. The review mechanism consists of two stages. At the first stage, article 41, paragraph 3, requires the arbitral tribunal to inform the parties promptly after its constitution of how it proposes to determine its fees and expenses. Any party then has 15 days to request the appointing authority to review that proposal. If the appointing authority considers the proposal of the arbitral tribunal to be inconsistent with the requirement of reasonableness in article 41, paragraph 1, it shall within 45 days make any necessary adjustments, which are binding upon the arbitral tribunal. At the second stage, article 41, paragraph 4, provides that, after being informed of the determination of the arbitrators' fees and expenses, any party has the right to request the appointing authority to review that determination. If no appointing authority has been agreed upon or designated, or if the appointing authority fails to act within the time specified in the Rules, the review shall be made by the Secretary-General of the Permanent Court of Arbitration. Within 45 days of the receipt of such referral, the reviewing authority shall make any adjustments to the arbitral tribunal's determination that are necessary to meet the criteria in article 41, paragraph 1, if the tribunal's determination is inconsistent with its proposal (and any adjustment thereto) under paragraph 3 of that article or is otherwise manifestly excessive.

59. The *travaux préparatoires* of the UNCITRAL Arbitration Rules show that the process for establishing the arbitrators' fees was regarded as crucial for the legitimacy and integrity of the arbitral process itself.[41]

60. The criteria and mechanism set out in article 41, paragraphs 1-4, was chosen to provide sufficient guidance to an appointing authority and to avoid time-consuming scrutiny of fee determinations.[42] Article 41, paragraph 4 (c), by cross-referring to paragraph 1 of that article, refers to the notion of reasonableness of the amount of arbitrators' fees, an element to be taken into account by the appointing authority if the adjustment of fees and expenses is necessary. In order to clarify that the review process should not be too intrusive, the words "manifestly excessive" were included in article 41, paragraph 4 (c).[43]

7. Advisory comments regarding deposits

61. Under article 43, paragraph 3, of the UNCITRAL Arbitration Rules, the arbitral tribunal shall fix the amounts of any initial or supplementary deposits only after consultation with the appointing authority, which may make any comments to the arbitral tribunal it deems appropriate concerning the amount of such deposits and supplementary deposits, if a party so requests and the appointing authority consents to perform this function. The institution may wish to indicate in its administrative procedures its willingness to do so. Supplementary deposits may be required if, in the course of proceedings, it appears that the costs will be higher than anticipated, for instance if the arbitral tribunal decides pursuant to the Rules to appoint an expert. Although not explicitly mentioned in the Rules, appointing authorities have in practice also commented and advised on interim payments.

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[41] A/CN.9/646, para. 20.

[42] A/CN.9/688, para. 23.

[43] *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17* (A/65/17), para. 172.

62. It should be noted that, under the Rules, this kind of advice is the only task relating to deposits that an appointing authority may be requested to fulfil. Thus, if an institution offers to perform any other functions (such as holding deposits or rendering an accounting thereof), it should be pointed out that this would constitute additional administrative services not included in the functions of an appointing authority (see para. 30 above).

Note: In addition to the information and suggestions set forth herein, assistance may be obtained from the secretariat of UNCITRAL:

International Trade Law Division
Office of Legal Affairs
United Nations
Vienna International Centre
P.O. Box 500
1400 Vienna
Austria
E-mail: uncitral@uncitral.org.

The secretariat could, for example, if so requested, assist in the drafting of institutional rules or administrative provisions, or it could make suggestions in this regard.

Annex II

List of documents before the Commission at its forty-fifth session

Symbol	*Title or description*
A/CN.9/735 and Add.1	Provisional agenda, annotations thereto and scheduling of meetings of the forty-fifth session
A/CN.9/736	Report of Working Group II (Arbitration and Conciliation) on the work of its fifty-fifth session (Vienna, 3-7 October 2011)
A/CN.9/737	Report of Working Group IV (Electronic Commerce) on the work of its forty-fifth session (Vienna, 10-14 October 2011)
A/CN.9/738	Report of Working Group V (Insolvency Law) on the work of its fortieth session (Vienna, 31 October-4 November 2011)
A/CN.9/739	Report of Working Group III (Online Dispute Resolution) on the work of its twenty-fourth session (Vienna, 14-18 November 2011)
A/CN.9/740	Report of Working Group VI (Security Interests) on the work of its twentieth session (Vienna, 12-16 December 2011)
A/CN.9/741	Report of Working Group II (Arbitration and Conciliation) on the work of its fifty-sixth session (New York, 6-10 February 2012)
A/CN.9/742	Report of Working Group V (Insolvency Law) on the work of its forty-first session (New York, 30 April-4 May 2012)
A/CN.9/743	Report of Working Group VI (Security Interests) on the work of its twenty-first session (New York, 14-18 May 2012)
A/CN.9/744	Report of Working Group III (Online Dispute Resolution) on the work of its twenty-fifth session (New York, 21-25 May 2012)
A/CN.9/745	Report of Working Group I (Procurement) on the work of its twenty-first session (New York, 16-20 April 2012)
A/CN.9/746 and Add.1	Note by the Secretariat on settlement of commercial disputes: recommendations to assist arbitral institutions and other interested bodies with regard to arbitration under the UNCITRAL Arbitration Rules, as revised in 2010
A/CN.9/747 and Add.1	Note by the Secretariat on settlement of commercial disputes: recommendations to assist arbitral institutions and other interested bodies with regard to arbitration under the UNCITRAL Arbitration Rules, as revised in 2010; compilation of comments by Governments
A/CN.9/748	Note by the Secretariat on promotion of ways and means of ensuring a uniform interpretation and application of UNCITRAL legal texts
A/CN.9/749	Note by the Secretariat on coordination activities
A/CN.9/750	Note by the Secretariat on bibliography of recent writings related to the work of UNCITRAL

Symbol	*Title or description*
A/CN.9/751	Note by the Secretariat on status of conventions and model laws
A/CN.9/752 and Add.1	Note by the Secretariat on a strategic direction for UNCITRAL
A/CN.9/753	Note by the Secretariat on technical cooperation and assistance
A/CN.9/754 and Add.1-3	Note by the Secretariat on a revised Guide to Enactment to accompany the UNCITRAL Model Law on Public Procurement
A/CN.9/755	Note by the Secretariat on procurement and infrastructure development: possible future work
A/CN.9/756	Note by the Secretariat on selected legal issues impacting microfinance
A/CN.9/757	Note by the Secretariat on selected legal issues impacting microfinance: observations by the New York State Bar Association (NYSBA) International Section
A/CN.9/758	Note by the Secretariat on possible future work in the area of international contract law: proposal by Switzerland on possible future work by UNCITRAL in the area of international contract law